TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted], 189[redacted]

No. [redacted] 96

SAN JUAN LIGHT AND TRANSIT COMPANY, PLAINTIFF IN ERROR,

vs.

HELEN REQUENA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

FILED JUNE 4TH, 1900.

(21,760)

(21,760)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 534.

SAN JUAN LIGHT AND TRANSIT COMPANY, PLAINTIFF IN ERROR,

vs.

BÉLEN REQUENA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 22, 1910.

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1 THE UNITED STATES OF AMERICA,
District of Porto Rico, ss:

At a stated term of the District Court of the United States for Porto Rico, within and for the District aforesaid, begun and held at the court-rooms of said Court in the city of San Juan, on the second Monday of October, being the twelfth day of that month in the year of our Lord, one thousand nine hundred and eight, and of the Independence of the United States of America the one hundred and thirty-third.

Present, the Honorable Bernard S. Rodey, Judge.

Among the proceedings had was the rendition of a judgment in the following case, to-wit:

No. 560. Law.

BELÉN REQUENA
vs.
THE SAN JUAN LIGHT & TRANSIT COMPANY.

Be it remembered that heretofore, to-wit, on the fourth day of December, 1908, came the plaintiff by her attorney and filed her Amended Complaint, in this cause, which said amended complaint is as follows, to-wit:

At Law.

BELÉN REQUENA, Plaintiff,
vs.
THE SAN JUAN LIGHT & TRANSIT CO. (A CORPORATION), Defendant.

Amended Complaint.

2 The above named plaintiff says that she is the widow of Francisco Molina Varella, deceased; that she is a citizen of Porto Rico, residing in the city of San Juan, Puerta de Tierra Ward; and that the defendant is a corporation duly organized under the laws of the State of New York, and doing business in Porto Rico, with its main office in the city of San Juan; and thereupon the plaintiff complains, and for cause of action alleges:

I.

That Francisco Molina Varella, deceased, was her husband, and that on the first day of April, 1908, she resided with her said husband, now deceased, at stop 3½, in Puerta de Tierra, a ward of the city of San Juan, Puerto Rico, and in the house belonging to the succession Dorado.

II.

That in the night of the first of April, 1908, the said Francisco Molina Varella was sitting in his home, between the hours of 11

and 12 o'clock, engaged in reading by the electric light in the room, and which was made stationary to the wall thereof, and the said light becoming extinct, or oscillating, the said Molina arose and attempted to adjust the same, with the result that he received from the wire conducting the electric current for said light such a shock as to cause his instant death.

III.

Plaintiff further says that the deceased, her husband was 38 years of age, and that he was an industrious man, of good business capacity, of excellent habits, and a man who conducted himself uprightly in the community, and that he was a good husband and a man of good moral character.

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IV.

Plaintiff further says that deceased, her said husband, at the time of his death, and for a long period of time prior thereto, had been earning $150 per month, as administrator or agent of various properties, and as a commission salesman, and besides he had for a long period of time been a partner in the firm of Molina & Colombani, engaged in the manufacturing of liquors.

V.

The plaintiff further says that the death of her said husband was caused by an attempt to adjust the electric light in the residence of her husband and herself, and that it occurred under the following circumstances, to-wit: That said light was stationary and fixed to the wall of the room in which the plaintiff was sitting, and that to turn said light on or off, the person so engaged must turn the globe within which the electric wire is inclosed, and that when the deceased attempted to so adjust his light, he was stricken as herein set forth; and the plaintiff avers and charges the fact to be that the death of her husband in the manner and form in this complaint set forth, was wholly due to the gross neglect, or carelessness, or incompetency of the defendant, or its employees, in the construction, care, or maintenance of said wire for furnishing light; and plaintiff further says that she is informed and believes that because of said negligence or incompetency, and for no other reason, the death of her husband was brought about; and that the deceased did not contribute in any manner to said accident by any fault or negligence on his part.

4

VI.

Plaintiff avers that the deceased had a reasonable expectancy of life of 22 years, and that his earning capacity having been in the past $150 per month, with promise of an increase in the future, she is damaged in the sum of $40,000, the actual loss to plaintiff caused by the death of her said husband; and the plaintiff says in this connection that her said husband was her entire support, and that although he was interested in business enterprises aside from his service as administrator of various houses and properties, his other business enterprises were in such condition that she is unable to state

the value to her of his loss in the management of the same; but she avers that she is advised and believes that $10,000 is a reasonable sum to demand as exemplary damage in a case of the character of that herein set forth.

VII.

Plaintiff further says that she was married to the deceased on the 26th day of June of the year 1903, and that no children are now living as the issue of said marriage.

Wherefore plaintiff demands judgment against the defendant for the sum of $50,000, besides costs and expenses incurred herein.

WILLIS SWEET,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA,
Island of Porto Rico, Municipality of San Juan, ss:

Belen Requena, being first duly sworn deposes and says: I am the plaintiff named in the foregoing action. I have had read and translated to me the complaint herein and know the contents therein set forth, and that the same is true of my knowledge, except as to the matter and things therein set forth upon information and belief, and as to those matters and things, I believe it to be true.

BELEN REQUENA,
Vda. de Molina, Plaintiff.

Sworn and subscribed to before me, this 4th day of December, 1908.

JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.,
By C. A. DAVIDSON, *Deputy.*

Demurrer to Complaint.

(Filed May 25, 1908.)

Law. No. —.

BELEN REQUENA, Plaintiff,
versus
THE SAN JUAN LIGHT AND TRANSIT COMPANY, Defendant.

Action for Damages, $50,000.

Comes the defendant herein, by its attorney, and demurring to the Complaint herein exhibited against it, says:—

That the facts therein stated do not constitute a cause of action herein against it.

Whereof Defendant prays judgment and for its costs.

THE SAN JUAN LIGHT AND TRANSIT COMPANY, *Defendant,*
By HENRY F. HORD, *Its Attorney.*

San Juan, P. R., May 25th, 1908.

6 *Motion.*

(Filed May 25, 1908.)

Law. No. —.

BELEN REQUENA, Plaintiff,
versus
THE SAN JUAN LIGHT AND TRANSIT COMPANY, Defendant.

Action for Damages, $50,000.00.

Motion to Strike Parts of Complaint.

Comes the defendant herein, by its attorney of record and moves the Court to strike from the Complaint herein, the following words:—
From paragraph 5 of the said Complaint:—

* * * "and state that said Molina came to his death by electrocution, and that his death must have followed instantly upon receiving the shock; and said physicians, to wit:—Doctor Lopez Sicardó and Doctor José Caballeria, further state that said autopsy demonstrated that the deceased was in vigorous health at the time of said accident, and that said autopsy disclosed no disease whatsoever, but on the contrary, that all of the vital organs of the deceased were in a healthy and vigorous condition."

because defendant says that so much of the said complaint is manifestly a statement of the evidence on which plaintiff expects to recover herein and that as such it should not be stated in the said complaint.

Whereof defendant prays judgment and for its costs in this particular.

SAN JUAN LIGHT AND TRANSIT COMPANY, *Defendant,*
By HENRY F. HORD, *Its Attorney of Record.*

San Juan, P. R., May 25th, 1908.

7 *Journal Entry.*

(November 6, 1908.)

Law. 560.

BELEN REQUENA
vs.
SAN JUAN LIGHT & TRANSIT CO.

This cause comes on to be heard on the demurrer to the complaint, Willis Sweet, Esq., appearing for the plaintiff and H. F. Hord, Esq., for the defendant. Whereupon the Court hears argument

by counsel for and against the demurrer, and being fully advised in the premises partially sustains said demurrer and orders that paragraphs Nos. 3, 4, and 5 be stricken from the complaint. Thereupon the Court overrules the demurrer as to the balance of the complaint. Counsel for defendant thereupon takes an exception which is allowed to such ruling of the Court. It is thereupon ordered that the defendant must further plead or answer on or before Monday, November the 9th instant.

Motion to Strike.

(Filed November 7, 1908.)

BELEN REQUENA, Plaintiff,
vs.
SAN JUAN LIGHT & TRANSIT CO., Defendant.

Comes the defendant herein and moves the Court to strike from clause nine of the complaint herein, the following words:

"* * * ; and the plaintiff says in this connection that her said husband was her entire support, and that although he was interested in business enterprises aside from his services as administrator of various houses and properties, his other business
8 enterprises were in such condition that she is unable to state the value to her of his loss in the management of the same; but she avers that she is advised and believes that $10,000 is a reasonable sum to demand as exemplary damage in a case of the character of that herein set forth."

And as it will ever pray.

HENRY F. HORD,
Attorney for Defendant.

San Juan, P. R., Nov. 7th, 1908.

Journal Entry.

(November 16, 1908.)

Law. 560.

BELEN REQUENA
vs.
SAN JUAN LIGHT & TRANSIT CO.

In this cause the court announces on this day, and orders, that the demurrer herein be, and it hereby is, overruled; and as to the motion to strike filed by the defendant, announces that because a portion of the matter asked to be stricken is proper, while another portion of it, if standing by itself, might be improper, it is therefore ordered that the motion to strike be, and the same hereby is, also overruled.

Answer.

(Filed November 7, 1908.)

BELEN REQUENA, Plaintiff,
vs.
SAN JUAN LIGHT AND TRANSIT COMPANY, Defendant.

Comes the defendant herein and answering to the com-
9 plaint herein, says:

1. That as to the allegations contained in paragraph first of said complaint, it is not informed and denies the same and prays for strict proof thereof.

2. That it denies the allegations contained in paragraph second of said complaint, and upon information and belief, alleges the same to be untrue in point of fact.

3. Answering to the allegations contained in paragraph six of said complaint, defendant denies the same, and, upon information and belief, says that they are not true.

4. As to the allegations contained in paragraph seven of said complaint, defendant says that, upon information and belief, the same are not true.

5. As to the allegations contained in paragraph eighth of said complaint, defendant answering, upon information and belief, as to the cause of the death of the deceased, says that said allegations are not true, and defendant denies specifically that it was at any time guilty of gross neglect or carelessness or incompetency, or that its employees, or any one of them, was guilty of gross neglect or carelessness or incompetency in the construction, care, or maintenance of said wire or fixtures for furnishing light. And defendant further denies that it was guilty of any degree of negligence or carelessness or incompetency in the premises, or that its employees were guilty of any such.

And upon information and belief, defendant denies that the deceased was killed by said electric current.

6. Answering to the allegations contained in paragraphs nine and ten of said complaint, defendant, upon information and belief, denies the truth of said allegations as in said complaint set out.

10 Wherefor- defendant prays judgment and for its costs.

HENRY F. HORD,
Attorney for Defendant.

San Juan, Porto Rico, November 7th, 1908.

UNITED STATES OF AMERICA,
Island of Porto Rico, City of San Juan:

Henry F. Hord, being first duly sworn deposes and says: that the defendant herein is a foreign corporation and that the Managing Director thereof in Porto Rico is absent from the jurisdiction of this Court and that he is the Attorney of Record for said defendant; that the allegations contained in the foregoing answer to the complaint

herein, are therein made upon information and belief and that he believes them to be true.

HENRY F. HORD,
Attorney for Defendant.

Sworn to and subscribed before me this 6th day of November, 1908, by Henry F. Hord personally known to me.

[NOTARY'S SEAL.] ANDRÉS B. CROSAS,
Notary Public.

Reg. No. 125.

And now again comes the defendant by its Attorney of Record, and repeating its allegations that the deceased was not killed by said electric current, yet says, in the alternative that should it hereinafter be shown that said deceased was killed by said current yet that the same was an unavoidable accident to which defendant in no manner contributed.

And defendant further says that if it should be shown that the deceased was killed by said electric current yet that not it, 11 nor any of its officers or employees, was the cause of said accident, but that the direct and sole cause thereof was the gross carelessness of the deceased in so taking hold of said electric light as to receive said shock.

The defendant further says that if said electric light or the wires thereto connected within said house of the deceased were in any manner defective yet that not it, but the deceased and the owner of said house were guilty of negligence in connection therewith and should it be shown that said current killed the deceased then that not it, but the carelessness and negligence of the deceased and of the owner of said house in not renewing said wires and lamps and in not having the proper instal-ations made for lighting purposes, was the direct and the immediate cause of the death of the deceased.

Wherefor- — prays judgment and for its costs.

HENRY F. HORD,
Attorney for Defendant.

San Juan, P. R., Nov. 7th, 1908.

Journal Entry.

(Dec. 3, 1908.)

560. Law.

BELEN REQUENA
vs.
SAN JUAN LIGHT & TRANSIT CO.

This cause comes on for trial, and comes also the plaintiff Belen Requena in her own proper person and by her attorney Willis Sweet, and comes also the defendant Company by its local representative

and by its attorney Henry F. Hord, and comes also a jury,
12 that is to say: Camilo Taboas, José Carrión, Frank H. Beardsley, James Ramsey, José Llorens Delgado, Gustavo Fort, L. G. McGuigan, Joseph C. Spear, H. F. Besosa, José H. Charbonier, Conrado Rivera, and H. N. Clarity, twelve good and lawful men chosen from the body of the district of Porto Rico, and duly sworn and impaneled to try the issues joined between the parties, and thereupon the trial of the cause is proceeded with. Thereupon counsel for the plaintiff moves that the jury be permitted to visit the premises where the alleged accident occurred, and counsel for the defendant not objecting to the request, and it appearing that the inspection of said premises by the jury will facilitate the trial of the cause, the jury, in the custody of the Marshal, accompanied by the Court, the official stenographer, the official interpreter and counsel for both sides, proceed to the scene of the alleged accident, and now at a later hour, the jury and the Court having returned, the trial is proceeded with, and the same not being finished at the adjournment hour, is continued over until to-morrow morning at nine o'clock A. M.

Journal Entry.

(Dec. 4, 1908.)

Law. 560.

BELEN REQUENA
vs.
SAN JUAN LIGHT & TRANSIT CO.

The trial of this cause is proceeded with as on yesterday, the jury being called and all found present, and the further taking of evidence is continued. The plaintiff's case as to the introduction of evidence being finished, counsel for the defendant Company moves that the jury be instructed to return a verdict for the defend-
13 ant. Whereupon the jury is permitted to retire under proper instructions, and the Court hears arguments as to said motion, and being fully advised in the premises, overrules the same. The jury is thereupon recalled and the trial continued, and at the conclusion of the taking of all the evidence counsel for the respective parties addresses the jury, and the Court delivers its instructions to them, and they retire in the custody of the Marshal to consider of their verdict. Thereafter at ten o'clock P. M., on this day, come the jury again, and after having been called and all found present, return into court the following verdict, that is to say:

"We, the jury, find for the plaintiff and assess her damages at the sum of $17,500.

HARRY A. BESOSA, *Foreman.*"

And the Court having inquired of them whether the same is their verdict, and all having answered that it is, the same is ordered to be filed and entered of record, and a proper judgment will hereafter be entered thereon.

Motion.

(Filed Dec. 19, 1908.)

560. Law.

BELEN REQUENA, Plaintiff,
vs.
SAN JUAN LIGHT & TRANSIT CO., Defendant.

Motion to Set Aside Verdict and Judgment and Dismiss the Cause.

14 Comes the defendant herein and moves the Court to set aside the verdict and judgment heretofore rendered and entered herein, respectively, and to dismiss this cause for lack of jurisdiction, because it says:—

1st. That no federal question is involved in this cause, and

2nd. That plaintiff is a citizen and resident of Porto Rico and the defendant is a corporation which has heretofore, in accordance with law, registered in Porto Rico, designated an agent in Porto Rico for service, does its principal business in Porto Rico and for the purposes of the jurisdiction of this Court is not a foreign corporation although originally incorporated in one of the United States.

Wherefore it prays judgment and for its costs.

HENRY F. HORD,
Attorney for Defendant.

San Juan, P. R., Dec. 19th, 1908.

Journal Entry.

(Feb. 1, 1909.)

Law. 560.

BELEN REQUENA
vs.
SAN JUAN LIGHT & TRANSIT CO.

15 In this cause the motion to set aside the verdict of the jury rendered on the 4th day of December 1908, comes on to be heard, Henry F. Hord appearing for, and Willis Sweet against, the same; and the court being fully advised in the premises, overrules said motion. Thereupon, it being necessary to enter judgment in the cause, it is

Ordered and adjudged that the plaintiff Belen Requena, do have and recover of and from the defendant the San Juan Light & Transit Company, the sum of Seventeen Thousand Five Hundred (17,500) Dollars, together with her costs in this behalf laid out and expended, to be taxed, with interest on the principal sum at six per cent. per annum from this date until paid, and that she have execution therefor.

Petition.

(Filed Feb. 23, 1909.)

BELEN REQUENA, Plaintiff,
vs.
SAN JUAN LIGHT & TRANSIT CO., Defendant.

Petition for a Writ of Error and Supersedeas.

The San Juan Light and Transit Company, defendant in the above entitled cause, feeling itself aggrieved by the verdict of the jury, and the judgment entered on the 1st day of February, 1909, comes now by Henry F. Hord its attorney, and petitions said Court for an order allowing said defendant to prosecute a writ of error to the Honorable Supreme Court of the United States, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount
16 of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

And your petitioner will ever pray.

HENRY F. HORD,
Attorney for Defendant.

San Juan, P. R., Feb. 23, 1909.

Order.

(Filed Feb. 23, 1909.)

BELEN REQUENA, Plaintiff,
vs.
SAN JUAN LIGHT & TRANSIT CO., Defendant.

Order Allowing Writ of Error.

At a stated term, to wit, the October term, A. D. 1908, of the District Court of the United States of America for Porto Rico, held *at* the 23rd day of February, in the year of our Lord one thousand nine hundred and nine.

Present: The Honorable B. S. Rodey, District Judge.

BELEN REQUENA, Plaintiff,
vs.
SAN JUAN LIGHT & TRANSIT CO., Defendant.

17 Upon motion of Henry F. Hord, Esq., attorney for defendant, and upon filing a petition for a writ of error and an

assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein.

B. S. RODEY, *Judge.*

San Juan, P. R., February 23rd, 1909.

Order.

(Filed Feb. 23, 1909.)

BELEN REQUENA, Plaintiff,

vs.

SAN JUAN LIGHT AND TRANSIT CO., Defendant.

Order Fixing the Amount of Supersedeas Bond on Writ of Error.

The defendant, San Juan Light and Transit Company, having this day filed its petition for a writ of error from the decision and judgment thereon made and entered, herein, to the Supreme Court of the United States, together with an assignment of errors within due time, and also praying that an order be made fixing the amount of security, which defendant should give and furnish upon said writ of error, and that further proceedings herein be suspended and stayed until the determination of said writ of error by said Supreme Court of the United States, and said petition having this day been duly allowed:

Now, therefore, it is ordered, that upon the said defendant,
18 San Juan Light and Transit Co., filing with the Clerk of this court a good and sufficient bond in the sum of twenty thousand dollars ($20,000.00), to the effect, that if the said defendant, San Juan Light and Transit Company, plaintiff in error, shall prosecute the said writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the said obligation to be void; else to remain in full force and virtue, the said bond to be approved by the Court that all further proceedings in this court be, and they are hereby suspended and stayed until the determination of said writ of error by the said United States Supreme Court.

Dated February 23rd, 1909.

B. S. RODEY, *Judge.*

Assignment of Errors.

(Filed Feb. 23, 1909.)

BELEN REQUENA, Plaintiff,

vs.

SAN JUAN LIGHT AND TRANSIT CO., Defendant.

Assignment of Error- on Writ of Error to the District Court of the United States for Porto Rico.

Comes now the plaintiff in error in the above entitled cause, and avers and shows that in the record and proceedings in said cause,

the District Court of the United States for Porto Rico erred to the grievous injury and wrong of the plaintiff herein, and to the prejudice, and against the rights of the plaintiff in error in the following particulars, to wit:—

19 1. That the Court erred in overruling defendant's motion to strike out from the complaint (amended Complaint) the foregoing paragraph:

"* * *; and the plaintiff says in this connection that her said husband was her entire support, and that although he was interested in business enterprises aside from his service as administrator of various houses and properties, his other business enterprises were in such condition that she is unable to state the value to her of his loss in the management of the same; but she avers that she is advised and believes that $10,000 is a reasonable sum to demand as exemplary damage in a case of the character of that herein set forth."

2. That the Court erred in charging the jury as follows:

"And you are further instructed that if you believe from a preponderance of the evidence that the deceased came to his death while innocently and without knowledge of any danger—using an incandescent light, the current for which was furnished, or to which the electricity was supplied by the defendant company, the presumption is that the electric company was negligent and it devolves upon it to show that the surplus and dangerous current that came over the wires did not occur from any negligent act on its part."

3. The Court erred in charging the jury as follows and thus withdrawing from it the pleas by defendant of unavoidable accident, contributory negligence and negligence of the owner of the house, to wit:

"The defendant filed what in effect amounts to a general denial of all the allegations of the plaintiff."

4. The Court erred in refusing to give to the jury the following charge requested by defendant:

"The jury are instructed that no verdict can be rendered herein against the defendant, unless it has been shown by a preponderance of the evidence that it was guilty of the negligence which was the proximate cause of the death of the deceased."

5. The Court erred in refusing to give to the jury the fol-

20 lowing charge requested by defendant:

"An inevitable accident is one that cannot be foreseen by the exercise of reasonable foresight or avoided by the use of reasonable caution and hence if the Jury should believe that the cause of deceased's death was an inevitable accident within the meaning of the foregoing definition, then plaintiff cannot recover herein.

6. The Court erred in refusing to give to the Jury the following charge requested by defendant:

"It is incumbent on the plaintiff to show negligence on the part of defendant, or she cannot recover."

7. The Court erred in refusing to give to the jury the following charge requested by defendant:

"If the jury should believe that defendant through its employees, inspected its lines, transformers, etc., within a reasonable time before the accident and that said lines, transformers, etc., were then in good

condition and that defendant had not prior to the accident, any notice of the said lines, transformers, etc., being in bad condition, then the Jury are instructed that plaintiff cannot recover."

8. The Court erred in refusing to give to the jury the following charge requested by defendant:

"If the jury should believe that the house installation belonged to the deceased and if defendant had no control over the same, and that the accident happened by reason of defect in said installation, then plaintiff cannot recover."

9. The Court erred in refusing to give to the jury the following charge requested by defendant:

"Unless it has been shown to the satisfaction of the Jury by a preponderance of the evidence herein that deceased died from an electric shock, then plaintiff cannot recover."

10. The Court erred in refusing to allow defendant to note its exceptions to the charge given by the Court to the jury, in the presence of the jury and in ordering said jury to retire before defendant could state said exceptions to the Court thus depriving defendant of
21 its right to ask the Court, before the jury retired, to correct the error, (as it conceived) in said charges so given.

11. That the Court erred in overruling and denying defendant's motion in arrest of judgment and to dismiss the cause for lack of jurisdiction, the grounds of said motion being as follows:

1st. That no federal question is involved in this cause, and,

2nd. That plaintiff is a citizen and resident of Porto Rico and the defendant is a corporation which has heretofore, in accordance with law, registered in Porto Rico, designated an agent in Porto Rico for service, does its principal business in Porto Rico and for the purposes of the jurisdiction of this Court is not a foreign corporation although originally incorporated in one of the United States.

Wherefore, for these and other manifest errors appearing in the record, the said San Juan Light and Transit Company, plaintiff in error, prays that the judgment of the said District Court of the United States for Porto Rico be reversed and set aside, and held for naught, and that judgment be rendered for plaintiff in error, granting it its rights under the statutes and laws of the United States, and plaintiff in error, also prays judgment for its costs.

HENRY F. HORD,
Attorney for San Juan Light and Transit Company, Plaintiff in Error.

San Juan, P. R., February 23rd, 1909.

22 *Supersedeas Bond.*

(Filed March 3, 1909.)

BELÉN REQUENA, Plaintiff,
vs.
SAN JUAN LIGHT & TRANSIT CO., Defendant.

Know all men by these presents, that we, San Juan Light and Transit Company, as principal and Caguas Tramway Company and

Porto Rico Power & Light Company, as sureties, are held and firmly bound unto the said Belen Requena, her certain attorneys, executors, administrators, or assigns, in the full and just sum of twenty thousand dollars to be paid to the said Belen Requena, her attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 2nd day of March, in the year of our Lord one thousand nine hundred and nine.

Whereas, lately at a session of the District Court of the United States for Porto Rico in a suit pending in said court, between Belén Requena plaintiff, and San Juan Light and Transit Company, defendant, a final judgment was rendered against the said defendant, and the said San Juan Light and Transit Company, defendant, having obtained from said Court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to said Belen Requena is about to be issued, citing and admonishing her to be and ap-
23 pear at the Supreme Court of the United States to be holden at Washington, D. C.

Now, the condition of the above obligation is such, that if the said San Juan Light and Transit Company shall prosecute its writ of error to effect and shall answer all damages and costs that may be awarded against it, if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

SAN JUAN LIGHT & TRANSIT COMPANY,
By HENRY F. HORD, *Its Attorney.*
CAGUAS TRAMWAY CO.,
By F. W. TEELE, *Managing Director.*
PORTO RICO POWER & LIGHT CO.,
By F. W. TEELE, *Managing Director.*

ISLAND OF PORTO RICO,
City of San Juan:

Before me, Andrés B. Crósas, a notary public in and for Porto Rico, at San Juan, P. R., on this day personally appeared Fred W. Teele, Managing Director of the Caguas Tramway Company, known to me to be the person whose name is subscribed to the foregoing bond, and who being by me duly sworn, on his oath deposes and says that he is the Managing Director in Porto Rico of the said Caguas Tramway Company; that the said Company by its charter has power and authority to serve as surety, on such bonds as this for the San Juan Light and Transit Company and has by resolution of its directors duly authorized affiant to execute such bonds; that said Caguas Tramway Company has in Porto Rico, subject to execution, real property over and above all its just debts and liabilities,
24 to the value of more than twenty thousand dollars.

F. W. TEELE.

Subscribed and sworn to before me by F. W. Teele, personally known to me and known to me to be the person described hereinbefore on this third day of March, 1909.

[NOTARY'S SEAL.] ANDRÉS B. CROSAS,
Notary Public.

Reg'd at number 203.

ISLAND OF PORTO RICO,
City of San Juan:

Before me, Andrés B. Crósas, a notary public in and for Porto Rico, at San Juan, P. R. on this day personally appeared Fred W. Teele, Managing Director of the Porto Rico Power and Light Company, known to me to be the person whose name is subscribed to the foregoing bond, and who being by me duly sworn, on his oath deposes and says that he is the Managing Director in Porto Rico of the said Porto Rico Power and Light Company; that the said Company by its charter has power to serve as surety, on such bonds as this for the San Juan Light and Transit Company, and has by resolution of its directors duly authorized affiant to execute such bonds; that said Porto Rico Power and Light Company has in Porto Rico, subject to execution, real property over and above all its just debts and liabilities, to the value of more than twenty thousand dollars.

F. W. TEELE.

Subscribed and sworn to before me by F. W. Teele, personally known to me and known to me to be the person described
25 hereinbefore on this third day of March, 1909.

[NOTARY'S SEAL.] ANDRÉS B. CROSAS,
Notary Public.

Reg'd at number 203.

Examined and approved as sufficient in form and substance and accepted and ordered filed this March 3/09.

B. S. RODEY, *Judge.*

Order.

(Filed March 24, 1909.)

BELEN REQUENA DE MOLINA
vs.
THE SAN JUAN LIGHT & TRANSIT COMPANY,

and

N. B. K. PETTINGILL
vs.
MANUEL ZENO GANDIA.

Order.

In the above entitled causes it being probable that the Court will not be present on the date fixed for the signing of the Bill of Excep-

tions herein, the time to do the same is hereby extended until on or before the tenth (10) day of May, 1909, or the further order of the Court.

San Juan, P. R., March 24, 1909.

B. S. RODEY, *Judge.*

26 (*Journal Entry May* 10, 1909.)

No. 560. Law.

BELÉN REQUENA
vs.
SAN JUAN LIGHT & TRANSIT COMPANY.

In this cause, by consent of counsel for the respective parties, and on their request, the time within which the Bill of Exceptions herein is to be presented and filed is extended to Monday the seventeenth, instant.

(*Journal Entry May* 17, 1909.)

No. 560. Law.

BELEN REQUENA
vs.
SAN JUAN LIGHT & TRANSIT CO.

Comes now Henry F. Hord, counsel for the defendant in the above entitled cause and presents to the Court for its signature and approval a bill of exceptions herein. Willis Sweet, counsel for the plaintiff being present and not objecting thereto, the Court after due examination settles, signs, and approves said bill of exceptions and orders same to the files.

(*Journal Entry May* 19, 1909.)

No. 560. Law.

BELEN REQUENA
vs.
SAN JUAN LIGHT & TRANSIT CO.

Upon motion of Henry F. Hord, counsel for the defend-
27 ant Company in the above-entitled cause, the time is extended to July the first, 1909, in which the transcript of the record in this cause may be filed in the Honorable the Supreme Court of the United States.

28 In the District Court of the United States for Porto Rico, Sitting at San Juan.

BELEN REQUENA
versus
SAN JUAN LIGHT AND TRANSIT COMPANY.

Bill of Exceptions.

Be it remembered that on the 4th day of Dec., 1908, the above entitled cause came on for trial before the above Court and a jury duly empannelled. The Honorable B. S. Rodey, presiding. The plaintiff appearing by Willis Sweet, Esq., her counsel, and the defendant appearing by Henry F. Hord, its counsel, and the following proceedings were had, to-wit:

The plaintiff, to prove the issues in her behalf, was sworn as a witness in her behalf and testified as follows:

Direct examination:

"My name is Belen Requena; I am twenty-eight years of age; am the plaintiff in this case and the widow of Francisco Molina, deceased. We were married on the 26th day of June, 1903, in San Juan, and we were residing on the 1st of April, 1908, in Puerta de Tierra, at Stop 4. My husband was living at the time and it was on the 1st of April, 1908, that the accident of which I com-
29 plain in this suit happened. On that date, about twelve o'clock at night, while I was in bed sleeping, my husband told me that he wanted to bathe his feet, and then I put a tub in the diningroom for that purpose and afterwards I went to bed. He remained reading a book in the parlor and then told me that after he would get through with his reading he would bathe his feet. I went to bed and was asleep, when at twelve or a quarter to twelve in the night I heard a noise in the diningroom. My sister called me and said that she had heard a noise in the diningroom and some sort of an explosion."

Defendant objected to the statement by witness that her sister had said to her that she had heard a noise in the diningroom and some sort of an explosion.

The Court overruled the objection and the defendant excepted.

"I heard the fire alarm, the ringing of the bell, and I put on my dress and called my husband. When I heard the fire alarm he was not in the house and I opened the door of the balcony and stood on the balcony for about five minutes. I then saw Mr. Colombani. He asked me what I was doing there and I told him that I was waiting for my husband; that he was out. He said that he had come from the fire and I asked him if he had seen my husband there and he replied that he had not.

"I called Mr. Luis Colombani and asked him"——

The defendant objected to the witness detailing conversations with other persons and statements to her, because the same was hearsay.

The Court overruled the objection and allowed the witness to testify to such matters and the defendant noted its objection.

30 "Luis Colombani told me that he had not seen my husband at the fire and asked me where I had left him when I went to bed. I told him that I had left him in the parlor reading and then that I had heard a noise at the rear of the house and he, Colombani, then said to me 'Let me step in for a moment and stay with you till he comes.' After about five minutes he said he was going home and I then said to him 'Don't go away. Let us go to the place where I heard the noise, because I am afraid when I am alone.' We then went through the door of my room and of the parlor where my sister had tried to turn on the light, but it did not work. I then opened the door of the parlor so that the light from the street could come in, and Colomvani lighted some matches and said 'Let us go to the diningroom to see.' We went to the diningroom by lighting matches and when we arrived there Colombani said 'Here is Mr. Molina,' and he continued lighting matches as we approached where he was lying.

"When I saw my husband I took him in my arms crying, and Colombani remained with him and I ran to the balcony and cried that I was alone; that I had no friends and that my husband was apparently dead. I then went back to where I had left him and Colombani, my sister Virginia, and I took him up to take him to bed. Mr. Alejandro Delgado came in while we were going to the dining room to place my husband on the bed, and he took him in his arms, and then Mr. Paniagua arrived and he asked what was the matter, and I told him that my husband was apparently dead. I immediately sent a fireman for a doctor and he returned with Dr. Lopez y Sicardo, about a quarter or a half an hour after we had found my husband."

31 Cross-examination:

"It was about half past ten when my husband told me that he wished to wash his feet. I left the basin in the dining room and a kettle on the table with tepid water. I left this kettle in the diningroom at about half past ten; I did not pay more attention to the time. I did not actually put any water in the basin and my husband continued reading in the parlor. He did not wash his feet at that time as he was finishing reading a novel. He said that he had one chapter more to read. It was dark when I heard my sister call, and this noise, and we did not see the time, but I suppose it was about twelve o'clock; between half past eleven and twelve. As my husband sat reading in the parlor he had taken off his coat and had on white trousers and shoes. The floor of the diningroom is a wooden one and there were five electric lights in the house at that time. One was in the parlor, one in my bedroom, another in my sister's bedroom; one in the dining room, and one in the kitchen. They were all of them burning that night. The parlor of our house opens out onto the street and my bedroom is at the corner of the

house with openings on the front street and also on the side street. My sister's bedroom is just behind mine with openings on the side street, and the kitchen is back of her room and adjoins it. The diningroom is also back of my sister's bedroom and adjoins it. When I found my husband's body he had on only his shirt and white trousers. He was dressed just as I had left him except that he was barefooted. His shoes and socks were near the table in the diningroom and the garters on the table.

32 The witness was here shown the verified complaint in this case, and her attention was called to the jurat at the end of the same.

"Yes, sir; that is my signature and I knew what I did when I signed that; it is a claim which I have filed against the Company."

The second clause in the complaint was read to the witness as follows; by counsel for the defendant:

"I cannot say whether he went to adjust that light or not because I was sleeping. I suppose he went to turn on or off that light. I swore that that was true and it is true. He was reading, but he was reading in the parlor."

"Q. Well, if the statement in the complaint is true, then your statement now that he was reading in the parlor cannot be true. Which is correct now?

A. When I went to bed I left him in the parlor and when he finishel reading the book he went to the dining room."

"Mr. Colombani's first name is Luis. I called to him to come to me when I was standing on the front porch of my house. He was coming along the street from the fire which had taken place in the house of Mr. Infanzon, at Stop 7, and he remained with me and went back through the house and found where my husband was. He did not go off and come back afterwards. He wanted to go but I asked him to stay because I was afraid; I was alone. It is not true that he went off home to his own house. My sister's name is Virginia. She was with me all of the time that I was standing on the front porch. I never leave my house during late hours of the night. It is not true that Mr. Colombani came to my house looking for my husband after I had been to his house. We did not go to Mr. Colombani's house. That is not true. There is a second story

33 to my house; above the ceiling, and there is a cellar under the kitchen and bathroom. My husband washed his feet in the diningroom and not in the bathroom. He was not going to take a bath but just to wash his feet. There is no regular bath tub in the bathroom. When we need a tub we place one there. The cellar is beneath the bathroom and kitchen and beneath the diningroom because it is the same space. There is only one room in the cellar. There is at the entrance a partition, a masonry partition. There is one division with a masonry partition. There are two rooms; one smaller in front and a larger one in the rear and the larger one is beneath the kitchen and diningroom and the smaller one beneath the bathroom. There were no windows in this cellar and it was not lighted because no one went in there during the night. During

the day we used a small kerosene lamp. The door to the entrance was in the back wall of the house, in the basement. About 1907 my husband and Mr. Colombani intended to buy some distilling apparatus from the Mallorquina and they set it up in the liquor factory which they had further up town. The Colombani who was engaged in the distilling business was George Colombani. There were never any electric lights in the cellar. It is not true that I and Luis Colombani found my husband in the cellar dead; that is false. The only light which was lighted in the house was when Mr. Paniagua got to the house that night. The rest of the time we were in darkness. That light was a small kerosene lamp and my husband was already lying in the bed when Mr. Paniagua came to the house. The electric lights did not light well; they were all the time oscillating and giving a poor light. Yes, the light was bad but nevertheless there was some light, but very slight. It would go out and then come on again. I am speaking of the electric light.
34 There was an oil lamp which Mr. Paniagua brought and another which was brought from the Emergency Hospital near the firemen's station. It was dark. The electric light in the parlor is a hanging lamp, not a swinging one; and there were lights in my bedroom and in my sister's. The lights in the diningroom and kitchen were stationary lights. The one in the diningroom was fixed to the wall a little higher than my head, and it was necessary to turn the globe off and on to light it. It did not hang by a wire; it was in a socket screwed to the wall somewhat loosely, but fixed to the wall. The metal portion, or metal disc, was loose and the only other part of it was the glass globe which you had to turn from one side to the other to turn the light on or off. There was no shade to the lamp. The building is a wooden one and the diningroom floor is about two meters above the ground. The only persons to arrive between the time of the arrival of Colombani and Mr. Delgado was Mr. Paniagua. After that, while I was on the balcony, the firemen arrived and also the wife of Mr. Delgado. There was another family living in the house at the time, but at that time they had been out in the country for about fifteen days and none of them were in the house. I had servants but they never slept in the house. The cook is named Julia and the maid Matias. We had no man servant. We had lived in the house since November, 1902. And we have lived there ever since. The house was lighted by electricity when we went to live there and the same lights that were there when we moved in are there now. We did not have any repairs done on them. The only change we made in the lights was to remove the globes from that portion of the house which we rented out, as the family did not care for electric light. Before the night of
35 the accident the electric lights had worked all right, and up to the time of the death of my husband we had no occasion to complain of the electric light in our house. The wires were apparently in good condition. Before April the first, 1908, my husband had had occasion at times to turn off and on the light in the diningroom. If I went to bed after him I turned off the light,

and if he went to bed last he turned it off. I never felt any bad effect from turning off the light myself nor did my husband so far as I know.

VIRGINIA REQUENA, being called for the plaintiff and duly sworn, testified as follows:

Direct examination:

My name is Virginia Requena and I am a sister of the plaintiff. I was at the home of Mr. Molina on the night of April 1st of this year; the night of the accident. I was in bed that night. My sister and I had gone to bed but Mr. Molina remained in the parlor reading. Between eleven and twelve o'clock in the night I was awakened by a noise something like an explosion, and then I called to my sister and she answered me and then she called her husband, Paco Molina, also. Then I left the bed and took the clothes in my hand and went into his room. At that time we heard a fire alarm and then my sister tried to turn on the light in her room, but she could not locate it and then I opened the door of the room which is near the bed, close to the bed, and then we went to the balcony. We stayed there for a while and then we asked Mr. Delgado about the whereabouts of Paco Molina and he said that he had not seen him. At that time Mr. Colombani came and we asked him if he had seen him and he said no. Then he stepped on the bal-
36 cony and we stayed there about five minutes, and then my sister told him she wanted to go inside of the house to find out about the noise and we went in through the door of the bedroom. We went to the parlor. I tried to turn on the light while my sister opened the door of the parlor, but it did not light; and then Mr. Colombani continued lighting matches through the hall up to the diningroom. When we reached the diningroom we saw him lying on the floor and we approached him, Colombani and myself and my sister, and when she saw him she began to cry. Colombani and I remained there and then she came again with Mr. Delgado and behind Mr. Paniagua with a lamp and we picked him up; Colombani and I, and then Mr. Delgado took her place and we carried him through the door of my room and placed him on the bed. My room adjoined the diningroom and the bed in which I was sleeping was about two yards and a half from where Mr. Molina was found lying. My sister's room was next to mine and farther from the diningroom. When Mr. Delgado and Mr. Paniagua came Mr. Molina was still in the diningroom; we were picking him up then. The house became crowded immediately and we immediately sent for a physician, who came in from a quarter to half an hour. His name was Lopez y Sicardo. When I retired that night Mr. Molina was sitting in the parlor reading.

Cross-examination:

I do nothing for a living. I have another sister who lives at Carolina. She is not a telegraph operator. She was not in the house that night. There was my sister Mrs. Requena and a little

girl, who was also a sister, and I were there. When I last saw my brother-in-law in the parlor reading it was about ten o'clock.
37 My sister and I went to bed at the same time and I do not think we got up again after that. She got up again at the time of the occurrence. From my room I could hear anything which went on in the diningroom and kitchen because my room is next to the diningroom. My room is about three meters square and the diningroom about two meters square, and there is only a plank partition which divides the two. There is a door leading from the diningroom into my room. I do not remember how my brother-in-law was dressed when I last saw him. He had on a coat and he had on his shoes in the parlor. When I saw him in the diningroom he had on his shirt and his trousers, and he was barefooted. I was asleep when I heard this noise; the explosion awoke me. When I heard it I immediately called to my sister, telling her that I had heard a noise in the diningroom, and we got frightened and opened the door of the room and went to the balcony. I called her and Molina and then she and I went out on the balcony. Mr. Colombani came up first while we were on the balcony and after him Mr. Delgado and afterwards Mr. Paniagua. And then lots of people—the firemen and everybody. When we found my brother-in-law on the floor of the diningroom his head was facing the door of my room hanging back. He was lying on one side but I do not remember whether he was lying out straight or was doubled up, because Mr. Colombani picked him up or moved him immediately. He picked him up but I helped him. We placed him back on the floor again, because at that time my sister (Mrs. Molina) and Mr. Delgado came in. After that, when I went to the parlor, I tried to turn on the electric light in that room, but it would not work. During the morning it gave a very dim light and all the other lights in the house were in the same condition; they gave some light but very *puur* light. The next night we had electric light. I have lived with my brother-in-law and sister three or four months
38 and during all of that time we had had electric lights in the house and they ordinarily worked well, but about this I do not remember very well. During the time I had been in the house we had no accidents with the light. Mr. Molina rented the whole house. The light in the diningroom was about a yard and a half from the floor. It was higher than my head. The socket was screwed stationary to the wall and the only moving part was the metallic portion which was sometimes loose, but there was no cord; the light did not hang by a cord. To turn the light on or off you had to hold the metallic portion, because it was loose. I know the condition that that socket in the diningroom is in now. It is there with a piece of the globe and is to-day in exactly the condition that it was in on the second of April, 1908. I recollect when you (Mr. Hord, counsel for defendant) went to the house a few days ago, and the lights in the diningroom and parlor are now in the same condition that they were in then. There were two other parties with you. The house is a wooden one and the floor of the dining-

room is a wooden floor. The first thing I did after this explosion was to call my sister and her husband Paco Molina. When I went to her room my sister was trying to turn on the light, but she could not locate it, and she said that Paco Molina was not there and she was wondering where he was and supposed he was at the place of the fire. He had been a fireman but he resigned about two years ago and at the time of the accident was not a fireman. I had lived in this house before the three months I have mentioned; on certain occasions during a year or more. I sometimes spent a month and sometimes days only. The house had a cellar under the kitchen and I think under part of the diningroom also. It is not true that Paco Molina died down in this cellar; it is false. It is not
39 true that Colombani helped me to carry him out of the cellar up the stairs and put him in bed; that is also false. I did not after his death, nor did the plaintiff in this case, state in the hearing of various persons that he had died in the cellar. How could we say that if it was not so?"

Redirect examination:

"When Mr. Colombani and I reached the diningroom he lighted a match and I looked at the bulb of the electric light and saw that it was broken."

Recross-examination:

(The witness was shown a sixteen candle power incandescent electric light globe.) "The globe in the diningroom was like that. It was oblong. I do not know what became of the pieces; I do not remember. Perhaps they were left on the floor. I saw some of them on the floor next day and he had some pieces in his hand. I do not remember the size of the pieces I saw on the floor. So many people were walking around that they broke them. I say that there were pieces of glass in the deceased's hand. That night we saw some small pieces in the palm of his hand; very small pieces. They were on the flesh of the hand but were not embedded in it."

Alejandro F. Delgado, being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

40 Direct examination:

"My name is Alejandro F. Delgado; I live at Stop 4, Puerta de Tierra; I am thirty-one years of age. On the first of April this year I lived at the same place where I live now. That house is about ten meters, the width of the street, from the house occupied by Mr. Molina at that time. I was at his house on the evening of April first and I knew of the accident to him. At about half past eleven or twelve, or a few minutes after twelve that night." * * *

At this point of the trial counsel for the plaintiff asked that the jury be taken to the scene of the accident and counsel for defendant

not objecting thereto, the Court, counsel for both parties, interpreter, and stenographer, and the jury in the care of the Marshal, proceeded to the scene of the accident.

Testimony Taken at the Scene of the Accident.

VIRGINIA REQUENA, being recalled as a witness by the Court, testified as follows:

"This is the place where I found my brother-in-law lying when I first came to him. This table was not here then and he was lying in this direction (indicating). His feet were towards this side (indicating toward the left where the electric light was). The first room from the diningroom is my bedroom and the one beyond is my sister's. The room to the left of the hallway is the parlor. The door leading from the diningroom to my bedroom is in the same condition that it was the night of the accident. There is
41 an opening but no door; there is only a screen. The way to the basement is on the outside."

BELEN REQUENA, being recalled as a witness by the Court, testified as follows:

"That is the same socket that was there the night my husband was killed. It has not been changed."

The Court and jury returned to the court house.

ALEJANDRO F. DELDAGO, being recalled, continued as follows:

Direct examination:

"At that time I was sitting in my house at my desk. At first I heard some whistling for a fire alarm and, of course, that called my attention because I was in doubt whether it was a fire or the whistle of a driver of a carriage, but immediately, as I live near the firemen's station, I heard the fire alarm. I went out immediately to find out where the fire was. I want to explain to get the thread as to how the accident happened. Upon my return from the fire Mrs. Molina asked me if I had seen her husband at the fire and I told her no, and immediately after I continued my work at my desk. Immediately after I had sat down I heard some yells or cries which I believed to be the cries of Mrs. Molina, and then I went out immediately and to her house. I found the house in darkness. I came through the door of the parlor, and when I heard the noise that was being made in the diningroom I went through the hallway, which is near that place. When I had reached there it was somewhat dark and only lighted with some matches. I
42 saw Molina's wife, his sister-in-law, and Luis Colombani. They had Molina in their arms and I met them when they were midway between the diningroom and the bedroom. Upon seeing Mrs. Molina's condition I replaced her and took hold of the body myself and I accompanied them until he was left on the bed.

We noticed there that he had a wound in his hand, without blood, and with some particles of glass. I assisted in carrying him from the place where I met them to the room. We carried him to the room next to the room adjoining the diningroom. I live across the street from Mr. Molina's house on the side street. His house is on the west side and mine is on the east side of the street. His wife, sister-in-law, and Mr. Colombani were carrying the body when I met them. I assisted them, replacing the wife. When he was left on the bed we thought that perhaps it was some accident."

Cross-examination:

"I am a draughtsman now and I have some other business also. On the first of April last I was employed in the Bureau of Public Works and, besides, I am manager of some property and have also the Singer agency. That is the reason why I have to work late at night,—till twelve o'clock. I have also a small hardware store in Puerta de Tierra and I am the co-owner of some houses. I do nothing else. I have known Molina for fifteen years intimately, and I am a good friend of the family. The deceased had no children. When I went over that night it was about twelve o'clock the first time. The widow was standing on the balcony. Her sister was with her and they were fully dressed. I saw them at a dis-
43 tance of ten meters when I left the house to see about the fire. I was gone to the fire a few minutes, the time only that I spent going and coming as there were no flames there. As I was coming back she asked me if I had seen Molina at the fire and I answered that I had not. At that time the house was dark. The first time that I went out of my house toward the fire was when I found the widow and her sister and Luis Colombani bringing the body through the hall. The second time that I returned was when I heard the yell or cry and then I went into the house. I was at my desk when I heard the cries and I then left my house for the second time. I did not stop and talk to Mrs. Molina the first time I left my house, as I live on the east side of the street and they on the west of the street. As I returned from the fire, after leaving my house for the first time, she inquired from her balcony and it was there that I answered her. As soon as I heard the cries I went back to the house. They were cries for help. I cannot repeat what she was saying as I was sitting at my desk and I only heard the cries through a window. I could hear the cries but I could not hear what she was saying. I could distinguish Mrs. Requena's voice, but could not distinguish what she was saying. I was only ten meters away. I could not tell what she was saying. She was crying out in a loud voice. I was surprised to hear her voice. I got to the house and immediately went in. The house was dark. I went into the parlor and proceeded inside as I was familiar with the house. I did not see Molina on the floor; they had picked him up already and he was in their arms. I am positive that he died in the diningroom. I know that of my own knowledge, because upon my arrival, when I reached the place, they had just picked him up from

the floor. Yes, he died in the diningroom; when I arrived it
44 was almost at the same distance from where I stood, between the diningroom and the bedroom. I did not see them pick him up. There was the tub or basin where he had been bathing his feet, and the towel. I did not see him bathe his feet. I only know so by hearsay. His wife told me so at the time. I have sworn to say what I have been testifying to and I have been told to swear to those things only that I know of my own knowledge. As to knowing whether he died in the diningroom or not, I was referring to the case that I arrived at the very moment when they had him in their arms. I arrived at that time and I helped to carry him. I did not see him lying on the floor; I just saw him after he was picked up and carried in their arms, and I helped to carry him. When I went by Mrs. Molina's house the first time she and her sister were standing on the porch; I saw them as I passed by. The fire was to the east of her house. As I came up the street to the road I saw Mrs. Molina and her sister on the balcony, and as well as I could tell from that distance they were fully dressed. I could see because they were standing at the corner of the balcony and they had clothes on them and I supposed they were dressed. I did not see any light in the house. There was light outside of the house. It came from the street lights. At that time I did not have electric light in my house; I cut the connection in the January preceding the date of this accident. I have been to Mrs. Molina's house since; the next night after his death. I cannot remember whether there were electric lights in the house next night or not. I have seen electric lights in that house after that night; some days afterwards, and I think they still have. Molina had lived in that house for some time, more than a year, but I cannot tell exactly. I know that the place belongs to the Dorado Estate. I do not know whether Molina was an agent for that Estate or not.

45 CARLOS PANIAGUA, being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct examination:

My name is Carlos Paniagua; I am forty-four years of age and I live in Puerta de Tierra. I knew Mr. Francisco Molina during his life. He lived in Puerta de Tierra, at Stop 4, and I lived next door to him for four years preceding April the first of this year. I know about the accident which happened to Mr. Molina on the night of that day. It was more than eleven o'clock; I do not know exactly the time when I heard a fire alarm. I was getting ready to go to bed and went to the balcony. Seeing that the fire was somewhat distant I remained there to see what would develop, and after a few moments I heard Mrs. Molina come from the outside of the house, coming out from the inside of her house very much frightened, crying for help in a distressed mood. As the balcony of the house of this lady and the balcony of my house are entirely joined, I immediately approached her offering my services and asking her what the matter was; and she, in a very excited condition, said that

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her husband she thought was dead. I immediately ran into the house to see what had happened and upon my entering the parlor I found the house in darkness and people walking up and down and other people that were going into the house, and at that time I heard some people ask for lights, because the house was in darkness. Then I went immediately to my house. I had kerosene lamps and got hold of a lamp which I had in the parlor and ran to the house and I made for the place where I heard the turmoil. I saw Mr. Delgado, Colombani and the sister-in-law, Miss Virginia. They were picking up or carrying the body and I said 'This is an accident.' In my opinion he had suffered a fit. Then every-
46 body there said 'Let us take him to the bed,' and I tried to help, but I could not do very much because I had the kerosene lamp in my right hand; and, finally, they almost dragged him to the bed through the adjoining room. When I first saw these people who were carrying him they were in the diningroom. After he was carried to the bed I stayed there until a short while after the doctor came in, and some other people, who were attracted by the cries, came to the house. I do not remember whether other lights were brought. I believe that some neighbor brought in some light also."

Cross-examination:

"I have been four or five years living alongside of Molina, because during the first two years I lived on the other side in the adjoining house. I was a very good friend of Molina; I was a neighbor and friend as I am a friend of many other people, and I am a good friend of the family. I know of my personal knowledge that he had lived there for two years or two years and a half. I have lived for two years in that house, near his house. Mr. Molina had lived there a year or a year and a half before, and when I said four years I was mistaken, because the other two years I did not live in the house adjoining Molina's, but in the next house. For that reason I have said that I lived in that place for four years. I cannot say exactly that I lived near Molina for four years, but I can say between two and three years. I did not keep an account of the time Molina lived near my house. In reply to your question as to whether it was a year and a half, two years and a half, or three or four years, I might state that prior to the death of Molina he had lived one
47 year next to my house. When I said four years I was referring to myself personally and to the length of time that I had lived in the house next to the one in which he lived. The time that I lived next to him might be one year, but it was not more than that. I am certain it was not six months. When I got into the house with the lamp Molina was in the diningroom; he was on the floor but they had hold of him there; he was lying on the floor. I am certain about that. They had got hold of him but he was lying on the floor. I have already said that those who intended to pick him up were Mr. Colombani, Miss Virginia, the sister-in-law, and Mr. Delgado, who preceded me, who came into the house before I did. He came into the house before I did. I

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cannot testify as to what Mr. Delgado saw or did before I arrived there. The two ladies and Mr. Delgado took him to Mrs. Molina's bed, through the bedroom of the young lady. I was lighting the way because all the house was in darkness. I could see very well because I had a lamp. They did not carry him through the house alongside the bedroom. I am sure of that because I was leading them with the light. When Mrs. Molina came out from the house much frightened she was in a very depressed attitude or mood, because she supposed or she already thought that some serious accident had happened. When I asked her what was the matter she said 'Come in! come in!' She said 'I think Frisco has died, something has happened to him in the diningroom.' I stayed in the house that night about one hour. When I retired I left in the house the lamp which I had supplied, and I think some other light which somebody else had furnished, was there also. I did not return again that night. I did not see Molina's house the next night. I am not sure, but I think they had electric lights the next night. I attended the funeral. I did not go to the house the next night, because I went to the funeral
48 and I did not feel well and I stayed at home. As he was a neighbor I cannot tell whether I went to his house the next night or not; I might have, but I cannot tell. I have seen electric lights in that house after the accident.

RAFAEL LOPEZ Y SICARDO, being called as a witness on behalf of plaintiff, was duly sworn and testified as follows:

Direct examination:

"My name is Rafael Lopez y Sicardo. I live in Puerta de Tierra, San Juan, and I am a physician and surgeon. I attended Francisco Molina on the night of April the first. Mr. Colombani called me in. I was at Stop 7 looking at a fire in a house near there. At that time I was in charge of the Emergency Hospital. I cannot say what time I reached Mr. Molina's house, but it was an hour after the fire started. He was lying on a bed. They told me where they had found him lying in the diningroom, and I then tried to inquire as a physician what was the matter. I took off his clothes and noticed a burn on his left hand, and somebody told me that the light was out in the house. I then thought about an electric shock, because I had attended three others in San Agustin street before that."

Counsel for defendant objected to the above testimony, because it was irrelevant and immaterial and was not connected with the subject matter of the inquiry. The objection was overruled by the Court and defendant excepted to the ruling.

"When I went to the residence of Mr. Molina I found him in bed.
49 That is why I made mention of the other cases, because it was the point which gave me light. I examined the injury to his left hand and it showed one of the characteristics of an electric burn. I have studied medicine for a year and a half. I studied in Baltimore, Maryland, in the College of Physicians and Surgeons. It is an institution of some reputation and character in the medical profession. I do not know its standing. It is a good

college. I have a diploma from that institution as a graduate. I am recognized here by my professional brethren as a physician and surgeon duly licensed, and I am in charge of the Emergency Hospital, in the Fourth Municipal District. I know that the burn was characteristic of an electric burn, because when we studied the Medico-Legal subjects we studied the subject of electric burns and burns caused by other things. We know that. We have to study that without having to study general electricity. I had never before that seen an electric burn. The other cases that I had seen that night were simply cases of shock; just little shocks, not like Molina. The other three men were not killed and had no burns on them. The burn on Molina was the first electric burn that I ever saw, and I had never treated an electric burn before. My experience in the College of Physicians and Surgeons did not include the treatment of electric burns; I never saw any practical work in that line. I only know on that subject what I studied out of books."

Counsel for defendant then objected to the witness testifying as an expert in electric burns or cases. The Court overruled the objection and counsel for defendant noted an exception to the ruling.

"I found a burn on the left hand. It was a dry burn without blood, and a scaling off of the skin. It had first the appearance of a bruise, but burnt; that is to say, a burnt bruise. That was
50 the reason I received my impression that it was an electric shock."

Counsel for defendant objected to the witness testifying as to his impressions, and as to his testifying in any degree as a medical expert in this case. The objection was overruled by the Court, and defendant noted an exception to the ruling.

"I tried to make artificial respiration and the other things that science recommends in such cases. I did nothing else. My impression was that death was caused by an electric shock. I examined his whole body and I found nothing else; he was rigid at that time. Rigor mortis had set in. The time as to which rigor mortis sets in varies; sometimes minutes, sometimes half an hour, sometimes an hour. It sometimes starts in within minutes. The only signs of the cause of his death that I saw were the burn and the appearance of rigor mortis, until the next day, when I made the autopsy. I stayed there about half an hour. I next saw the body in the cemetery, the next day when I participated in the autopsy. I had charge of it. Dr. Carballeira, Dr. del Toro, and Dr. Ordoñez were with me."

Counsel for plaintiff asked the following question:
"What did you find from the autopsy?"

Counsel for defendant objected to the question; the Court overruled the objection, and defendant saved its exception to the ruling.

"Dr. Carballeira and myself made the autopsy. We first observed the exterior of the body. He was a man of more
51 than five feet high; white; and had a burn on the left hand, on the interior side of his thumb and the right border of

the index finger. We examined the whole body and it presented ecchymosis: his left arm, in the pectoral side and in the back, and some black spots on the body. That was on account of the decomposition of the body at that time. I opened the abdomen; it was distended by gases, and we found all the organs congested. When we cut the liver a large quantity of fluid blood came out, dark in color, and the blood was scarlet in color. All the organs were in a perfect state, and we examined the kidneys, the liver, and the intestines. The blood vessels were all congested. We examined the heart and found the left ventricle empty and the other full of blood. The blood in the heart was liquid and dark in color. The cerebrum we found congested also and the fourth ventricle of the cerebrum was also congested a little; petechials were present. The impression created on me, as a whole, was that according to my knowledge nothing could produce such a physiological condition except an electric shock."

Counsel for defendant objected to the last statement by the witness, on the ground that the witness had not qualified himself as an expert on electrical subjects. The Court overruled the objection and counsel for defendant noted its exception to the ruling.

"I say the condition that I found him in led me to believe that death was caused by an electric shock, because the medical books, the Medico-Legal books, which we have to study in all the colleges, show us that the body which is killed by electrical energy presents all those characteristics. I can discuss that with any doctor who may come here.

52 Counsel for the defendant objected to the above testimony by the witness, on the grounds already stated; the Court overruled the objection and defendant noted its exception to the ruling.

Cross-examination:

"When I first saw the body it was in the bed. There was a lot of people, his family and others there. Luis Colombani is the young man who called me, at Stop No. 7. He said, 'Doctor, come, because I think Mr. Molina is in an accident.' He did not say what kind of an accident. I did not speak to anybody when I got there. I went to the body in the bed and tried to take off his clothing, because there was no respiration and no heart palpitation. I then tried to do my duty. I do not know how many volts of electricity would kill an ordinary man. I have studied that in the medical books, but I forget. I cannot say if fifty volts would kill him, nor a hundred. I cannot say if ten or one hundred would. I do not know whether one thousand or two thousand would kill. I cannot say as to quantity. A person may be killed by electricity in two ways; by destruction of the organism and the destruction of the physiological functions, the paralysis of the heart or lungs. That would be by incineration, by simply burning the man up. If there were a very strong current of electricity on a wire running between two poles and a man climbed and touched it, I do not know whether

or not he would get a shock. If one were standing on a plank floor and took an electric light wire in his hand, whether he felt a shock or not would depend upon the material of the floor and the condition of the individual; with shoes or no shoes, and something else. I
53 am no electrical expert; I am testifying as a physician; but I think if a man with shoes on a wooden floor touched an electric wire, he would not receive a big shock. He might receive some shock, but I do not know; I cannot be sure. If he was barefooted and stood on a wooden floor with damp feet, he would get an electric shock. If he were barefooted and stood on a dry floor, I do not know whether he would get a shock or not, but I think he would. If he had just washed his feet and stood on a plank floor and touched an electric wire, it would be a better conductor because of the dampness. Humidity is a good conductor. With a big voltage on the wire a man standing with damp feet on the floor would receive an electric shock, but I cannot say the number of volts which would kill a man. The burns were on his left hand; they were on the inside of the thumb and over the part where it joins the hand, and upon the index finger. I cannot say whether it began at the first, second, or third phalanx of the index finger. I do not know the extent of the burn; that is, the inside portion of the index finger. I- spread inside and outside of the index finger and thumb; it was star shaped. It was a quick burn and was jagged. The part most severely burned was in the center, between the index finger and the thumb; the soft tissue. I know what a primary, a secondary, and third stage burns are; the first stage is when the epidermis is burned; the second stage is when the skin and the dermis just beneath the skin are burned; and the third stage, and this was the third stage, goes clear to the bone. The burn on this man's hand did not go into the flesh completely, but only those tissues beneath the dermis and epidermis. It went through the epidermis and through the dermis and a small way into the flesh. At some places it was deeper than others. On the thumb
54 and finger it reached the bone. He had that kind of a burn. He had on the thumb and finger a burn of the third degree. I suppose it was to the bone. I traced how far it extended longitudinally. I know that it was from the first joint of the index finger back to the joint of the thumb. Whether a man standing up and receiving an electric shock is killed instantly or not depends, I think, on the number of volts which pass through the body."

The COURT: There is a question in New York State at the present time as to whether they shall continue electrocution in the State, and as to whether it kills people instantly or not.

Defendant noted an exception to the Judge's remarks.

"A man who receives an electric shock may faint, and sometimes there is a paralyzation of the respiration just for a few minutes and then the man recovers, but the effect of the shock is instantaneous. When one receives an electric shock the first effect is the muscular or tonic contraction, and then you have the chronic convulsions

which come afterwards, and then you have a momentary paralyzation of the respiration. This does not all take place instantly, as we might say, but one before the other; the first in order is the muscular contraction. That is the first phenomenon. Its effect on a man standing up would be to cause him to fall down. Some people who receive an electric shock cannot separate themselves from the point of contact, and in the period of tonic convulsion they stay there for some time; and when the shock reaches the other point, they fall somewhere on the floor or back. This inability during the period of tonic convulsion to turn loose the point of contact, is because of the hands becoming paralyzed in that shape, and is only produced when a man is so situated that if he falls he takes the wire with him; in other words, he has no volition to turn the wire loose, but that just takes minutes. That is why
55 in the period of tonic convulsion he cannot turn it loose. I do not know whether if a man of Mr. Molina's height and weight, who reached up with his left hand and caught hold of an electric light which was screwed tight to the wall and received an electric shock that was sufficient to kill him, whether he would remain standing on his feet or would fall instantly to the floor. How can I answer to that question, because I think it is better for an electrician; but I think that if Mr. Molina was put in the same position that you state, it might be that he would remain attached to the point of contact after the muscular contraction came and that he could not leave it; and then when the tonic convulsion came and if the body were standing, it might be that he would fall to the floor and stay there; and it might be that after the tonic convulsion ceased, the body would fall. The kind of a burn, for the first, second, or third degree, which a man would receive if he fell to the ground upon receiving the shock, that is, if his own weight pulled him away from the contact wire, is a question for an electrician to answer. You do not always find the same kind of a burn; sometimes there is a burn at the place of entrance, and sometimes you have no more. I do not know what kind of a burn a man would receive if he were standing on his feet and one of his hands comes in contact with an electrical conductor and he received a shock just sufficient to kill him and the weight of his body pulled him away from the object. I think that would depend on the strength of the shock.

56 JOSE CARBALLEIRA, being called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct examination:

My name is José Carballeira; I am twenty-seven years old. I live here in San Juan and am Assistant Health Officer of San Juan and I have in charge the Emergency Hospital of San Juan, the Quarantine Hospital in San Juan, and three or four different institutions in San Juan; I am a graduated physician from the medical school of Syracuse University. I spent six months at St. Joseph's Hospital also, and I took my examinations successfully before the State Board in New York. I have been practising medicine in San Juan for

four years and before that I practised one year at the Good Shepherd Hospital in Syracuse, and I have also taken a six months course at the Maternity Hospital in New York. I performed the autopsy on Mr. Molina, assisted by Dr. Lopez. Doctors del Toro and Dr. Ordoñez were there also, the latter saying that he represented the family of the deceased and the former the Electric Light Company.

Q. Upon making an autopsy of a deceased person, are you able to state the cause of death.

Defendant objected to this witness testifying as to the cause of the death of the deceased, unless he first qualified himself as an electrical expert as far as medical science is concerned.

The Court overruled the objection and the defendant noted its exception to the ruling.

57 I was not acquainted with the deceased before his death. I received an order from Dr. Gomez Brioso, the City Health Officer. I will give a short brief of what we found during the autopsy. We first made an external examination of the body and we found an electric burn of the third degree. During my college course I have had sufficient experience with electric burns and also at the hospitals, especially when I was interne at the Good Shepherd Hospital, where we had many cases of burns caused by electricity. The city of Syracuse is a city where they have a great many electrical manufactories, and we had many cases. They manufactured electrical apparatus there and we had many cases of burns by electricity brought to the hospital, and I saw them and they all presented the same appearance; every one of them. I should say that during the year I was at the Good Shepherd Hospital I probably saw fifty or sixty cases of burns by electricity in the city of Syracuse, and they all presented the same characteristics. It is a general rule in burns produced by electricity that at the point of contact, at the point of entrance of the electricity, you have what is called an irregular injury, without bleeding and jagged in appearance, and the degree of the burn depends, of course, upon the character of the voltage, so that you may have a burn of the first degree, namely, a burn just of the skin, or you may have one of the second degree, or you may have a burn going through to the bone. But you always have that jagged appearance of the skin. It is an unmistakable sign of all burns caused by electricity, and you find that in all burns produced by electricity that appearance is always there. The burn on Mr. Molina that morning was of the third degree, going to the bone, and on the index finger of the left hand and also on the border of the thumb and on the palm and interior surface of the index finger, and that shows that these two fingers came in contact with the object which produced the electric shock. At that point there was a burn and besides there was along the forearm
58 of the same hand and along the arm across the whole extent of the back and through the left pectoral region an ecchymosis and extravasation of the blood, coagulated just as when you have a black eye. That was what was presented on the forearm and on

the chest of the deceased, and that is always characteristic of lesions due to electric burns, namely, that ecchymosis. That was all we found on the external examination, beside the rigor mortis and the great distention of the abdomen and the dilation of the pupil. We proceeded then to make an internal examination. We examined first the organs of the abdomen and we found that the intestines were very much congested; that the blood vessels of these organs were very much congested to a great extent, but the organ which was most congested of all was the liver. We tried to take out the liver. It was of normal size and in tearing or cutting the portal vein and the inferior venæ cavæ, we noticed a third characteristic of symptoms or signs of persons that die by electrocution, and that is the fluidity of the blood, which you never have in any other kind of death, no matter what it is. You always have a dark colored fluid blood in the case of electrocution, ,and we noticed that and the color of it, and the great congestion of all the organs of the abdominal cavity. We opened the kidneys, the spleen, and the stomach, and everything was normal. The only thing was the congestion which might have been caused by anything which produces asphyxia. The asphyxia being the direct cause of death in cases of electrocution, the organs show that appearance. We proceeded then to the pectoral cavity and we found there another characteristic of death by electrocution, and that was the empty heart. The left side of the heart is found full of blood at death, except in cases of death produced by electrocution. The left side of the heart in this case was entirely empty. We examined the pleura which envelops the lungs, and the pericardium which envelops the heart and we
59 found inside of those membranes minute petechial spots, or minute spots of blood, which come from the rupture of the very smallest blood vessels. We opened the brain and the same condition prevailed there with another characteristic of lesions found in electrocution, that is, the softening of that portion of the brain pons varolii. That was soft and made a soft pulp in the fingers when taken up, and beside we had the same spots on the third ventricle of the brain. We therefore came to the conclusion, and finding nothing abnormal on the valves of the heart, and the lungs being entirely normal, except the congestion due to asph-xia, the cause of the death, and the spots I have just told about, and finding nothing else but these conditions due to electrocution, and clinching all these and the characteristic burn produced by electricity on the left hand; taking all these into consideration, we came to the conclusion that the man had died as the result of a high electrical current, without doubt, and that I testify to. The mark on his arm and back was visible the length of the forearm and the arm, and it extended down the back and took in the left side of the chest, having the appearance of a black eye, that being its color. It was due to the extravasation of the blood from the small capillaries. Molina, from all appearances, was a man of strong constitution. The vital organs of his body were entirely congested but, as I said before, they were in a very normal condition. I examined especially the heart, fearing that he might have had something wrong

with it; but after examining it, we found nothing wrong in the valves. There was no thickening of them and no lesion of the valves of the heart.

Cross-examination:

I am absolutely sure that this man died from an electric shock. Asphyxia might have produced some of the symptoms which
60 I have stated, but not the petechials on the brain and not the softening of the pons varolii. That could be produced only by electrocution, by which I mean the instantaneous death of a man caused by a current of high voltage. I should say that it would take from 1000 to 1100 volts to kill a man of Molina's constitution. That would kill a man of about Molina's kind, although there are certain conditions which would favor the sudden death. Under those conditions the death would be more sudden than under others, but death would result in any event.

MANUEL A. RUIZ, being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct examination:

My name is Manuel A. Ruiz, I am thirty-seven years old, a municipal inspector and electrician in San Juan. I am an inspector of electrical installations and all matters concerning electricity under the authority of and for the municipality of San Juan. I have been engaged as an electrician for fourteen years here in San Juan, with the Luz Electrica Company. There were several transformers in use in Puerta de Tierra. I cannot recollect exactly how many. They were connected in multiple; that is, the secondary lines joining one transformer with another. The object of that is to supply current to the customers, and the effect is so that they all work at the same time. There might have been two or three transformers, but the effect would have been the same if there had been only one.

61 BEN CORNWALL, being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct examination:

My name is Ben Cornwall; I live at Mayaguez, Porto Rico, and I am twenty-seven years old. By occupation I am an electrician and have been engaged in that business for about ten years. I first started to work as a helper to an electrician in St. Louis and various electric light plants. My work has been electricity in all its branches. I have been in charge of about seven different plants. They were situated in St. Louis, Missouri, and were the Obert Brewing Company, the Anheuser-Busch Bottling Works in Bellevue, Illinois, and the Mayaguez Light and Power Company. I am still in charge of the latter. I have handled machinery connected with the generation and also the lines that transmit the currents to the houses, and I was in charge of the first successful alternating current in St.

Louis, where they used 2200 volts and transformed it to 110, and now they are using 2200 volts on all the circuits of this company. A transformer is an apparatus by which the voltage may be raised or lowered in relation to the number of turns of wire around a core of iron. Its office is to reduce the use of copper wire. It receives a high voltage on one side and sends out a small voltage on the other side, or vice versa. It is used for the purpose of stepping up or stepping down the voltage. The current leaves the plant at whatever voltage it may be, a 1000 or 1200, or whatever current may be used, or 2000 or 20,000 volts, and it reaches the transformer in the primary lines and goes into the primary coil of the trans-
62 former. By induction it goes into the secondary coil and comes out at a different voltage relative to the difference in the number of turns between the secondary and primary coils. The company supplying the electricity controls the amount of voltage sent into the transformer and the amount sent out. After the wires leave the transformer they are called secondary lines or low tension lines to the different houses and sources of need. The first wires are called primary wires. Multiple connection of transformers means that they are connected in multiple so as to practically make them one. If there were a thousand transformers it would not matter, they would be all the same and form but one unit. There would be but one circuit. I do not know what the voltage in Puerta de Tierra is, either primary or secondary. Just before the current leaves a plant it as a rule goes through a circuit-breaker, which is an automatic fuse going on the lines on glass insulators of some kind. On high tension circuits it is supposed that the wires would be on double petticoated insulators and the wires lead off from it to the different transformers, going first through a fuse and then to the primary coil, and there being reduced by induction into the secondary coil, and then it goes to the knife switch in the premises where the light is to be used, and from the knife switch into a fuse-block of some kind, having at least two and one-half inches break, and from there it goes to each of the lights of the house. It is then controlled by keys at the socket, unless controlled by a switch which can be turned on or off at the rate of five hundred times a minute for three hours, making and breaking the contact of one amphere. The technical term "induction" means that the electricity is induced through a laminated iron core relative to the number of turns of the wire, of cross section of the wire. If the primary current should in any way come in contact with the secondary current, it would immediately blow the fuse, killing that line entirely. If it
63 does not do that, then the line either has no fuse or the fuse is not of the proper carrying capacity. By this I mean that it does not melt at the proper heat. A primary current has a fuse of lead alloy. This fuse would only admit a certain amphérage or heat to go over it. When the amphérage or heat exceeds that rate it melts the fuse at a certain degree of heat. The secondary wire being overloaded would naturally overload the primary line just the same, and would blow the fuses, and any trouble which should happen in the house would overload the secondary line and

that would probably enter the primary line and kill the current in it. The effect of this would be that there would be no current go to the house and the lights would go out. That is a method by which it is intended to protect injury to the house and its inhabitants. There are no other methods except fuses used by a company to protect the user of electricity in a house. Other methods are by insulating the wires and properly insulating the apparatus that is being used. If the primary current were to pass to the secondary and be carried to the house, the fuse would be blown out and it would cause no injury to the house. That is, if the fuse is properly constructed at the transformer. I observed the wiring and the condition of the wiring at this house in question, that is, Mr. Molina's house. I was first there about two weeks ago and I examined the broken bulb and the socket and, generally, the conditions surrounding the wire, and also the wiring and the insulation. I found that where the wire entered the house there was no fuse on one side; it is cut through solid. In the second place the wiring was in very bad condition, in dangerous condition for fire or life. It is against the wood and it is dangerous from fire. The wire touches the wood which it should not do. It comes from sockets which are not supposed to be handled by the hand; it should be controlled by switches,
but it is not, and it necessitated the man getting hold of
64 the lamp itself and the socket to hold the socket tight, in order
to loosen the lamp to turn the light on or off. The wire is very old and is not properly protected in any way. I have heard the testimony with reference to the accident which happened to Mr. Molina. An electric burn is always a jagged one. I am not a doctor and cannot tell you why that is so, but it is always a jagged burn. I have received several of them myself. After hearing all of the evidence in this case my opinion is that if the man was killed by touching an electric light it was caused by one of the transformers or one of the units of the transformer was in some way grounded and the primary got on the secondary line in some way, but how I do not know. There was not proper fuse protection to protect the secondary line, and consequently the voltage remained on this line, not blowing the fuse. It being grounded, Mr. Molina standing on a conductor, reaching up and getting hold of the socket received the shock. As he received the current he was reaching up with one hand to hold the bulb and with the other, the left hand in this instance, he reached up to turn his light because it was dim as stated by the other witnesses. Having this kind of a socket it would naturally have a dim light if it was not very tight. It would be his intention to screw that light tight to make a good connection in it, and to do that he would have to tighten up the rubber ring that was there. He got hold of the rubber ring and at the same time he touched the base of the lamp which is at the opposite polarity with the floor, completing the circuit through his fingers and body to his feet and to the floor and back over the transformer. The defect which caused such a current to come into that house was on the primary lines, most likely in the transformer. Not at the plant, but on the different posts, the different distributing centers which

they have. In this instance we have one at stop three and a
65 half, in front of the ice plant, and one at stop six. The floor was of one polarity; that is, it was a conductor, like any other material, and the fluid came from the transformer through a grounded system. By this I mean that the system was grounded either on the transformer or in the primary lines and that the secondary lines are grounded also. The primary line came in contact with the secondary line, and of course it went to the ground and there was not a proper fuse connection and it did not blow it out, and therefore the ground was charged. They charged the floor by coming up through the supports of the same. I can give the jury an illustration of making a connection with the ground and connecting it with a lamp. The condition of the premises yesterday and when I first examined it is the same; everything remained as it was. The breaking of that bulb in the hand of Mr. Molina is accounted for in this way: owing to the high voltage that came through his body completing the circuit, the high voltage would explode the bulb. It would naturally cause a short circuit and break the film.

I will explain more fully the conditions of the current in that globe; just how much it will hold without breaking and why. It is rated at 110; between 100 and 115 volts and it will possibly burn with a fifteen per cent. overcharge of voltage, perhaps an hour. With fifty per cent. overcharge it won't burn over half a minute, and with less voltage, it will burn, making a little string and as the voltage would be increased, it will become brighter until it becomes incandescent. With too great a voltage it would instantly burn out.

As to how much of a voltage would kill a man, that would vary greatly with the amount of contact he had. By that I mean, one would never think of carrying lamps to test up five hundred volts, but I would put my finger on it and I would not feel much of a shock, yet I might take five hundred volts and firmly bind
66 it to me and burn me up; while it would not be as instantaneous as eighteen hundred volts, the recognized instantaneous death, and the voltage that is used in the prison at New York, Sing Sing, to electrocute prisoners, yet it would burn me up, char me.

From the testimony I have heard in this case, I would say as to the opportunity for contact in the case of Mr. Molina, that if he had a good contact on his hand, he didn't have too good a contact, which is conclusively shown by the fact that it burned his hand. The small contact shows a burn and the large contact does not, because it formed a scar there, the scar being a flash of fire, electric fire. I could not form any idea of the amount of voltage received by Molina, but should say it was great, in so far as it showed its course for a long distance on his body, as was explained by the doctor, and because it showed a black and red color even down his back and to his feet. In this instance, 104 volts are used in the house for one of those lamps, which is not dangerous to a man using the lamps ordinarily in his house. If the lamp were broken, the shock would not kill him; he would let loose of it; if it were high voltage, then he would not let loose of it. I will explain:

It forms a circuit in your body and it contracts your muscles so that you have no power to move your muscles or move your legs, and you simply stand there and hold it. Not that you haven't strength enough, but your muscles are not working. They are contracted. The longer the fingers are held there, the larger the burn would be. As soon as it burned the flesh at any one place, the arc would become longer and reach over for more flesh or better contact and it would become a larger burn. This would indicate that Molina did not stand there very long but he was there for some time, although I cannot say how long; he was there for a time, however, to produce this burn.

67 In examining the wiring in the house yesterday upstairs, I noticed there was a rosette protecting part of the rooms and there was also a branch block or a fuse block, both of those are fuse blocks protecting the room next to the parlor. I think it was called Molina's room where he and his wife lived, and in the line that went to the back of the house, there was no protection in so far as the main fuse block is concerned. One side was cut out. One side had a fuse block in it, I don't know whether it was blown out or not."

Cross-examination:

"When I went to the house about two weeks ago, I saw there were fuses upstairs, but I didn't take off the front block. There is one fuse block and there should be two. I didn't take that out because there was no ladder there to get to it. No, sir, I never saw the condition of that outside connection of the house before three weeks ago and don't know what condition it was in in April or May, 1908; I don't know what condition it was in until three weeks ago, so that I cannot testify whether that fuse was or was not there on the 2nd of April or not. Inside of the house, I inspected the fuses upstairs, there are only two, and I saw that there was fuse wire in them; it is inside of the rosette and I had to separate the rosette to see it, which I did, as I loosened the screw, as you did yesterday. Yes, sir, I did try to open that rosette yesterday without taking the screws off. I opened it once before and the screws should not have recorroded in that time. When I went there three weeks ago I opened it with my pocket knife and yesterday I tried to open it with my hands. There is no fuse block in that rosette; there is a fuse wire, which I found in perfect condition. As to what voltage that fuse wire is calculated to carry and not burn out, it would carry

68 indefinite voltage, one amp*h*ere to one amp*h*ere and a half, which might mean a million volts, with lamps at 110 power as those are. That wire is calculated to carry that. It would carry about one 32 candle power lamp at 110 volts, that would necessitate about one amp*h*ere. If you put more than that on it, the fuse wire would blow out. Yes, sir, the film inside of the light is calculated for 110 volts, and if you put on more volts than that, it would have burned the fuse out—in other words, the lamp would have been of no further use. I heard the testimony of these witnesses, that the lamps burned that night dimly, so that the film was evidently not

burned out either in the parlor light or the front bedroom or the second bedroom light, according to their testimony. No, sir, there was no fuse at all between the wire which conducted the current into the house and the second bedroom; no connection at all tapped right on to the wire, but I won't be sure whether the light in the second bedroom is in the same condition as it is in the dining-room. There was one rosette, and I am not sure whether there were two or three upstairs. I think there were only two, one over the parlor and one over the front bedroom. I know there was no fuse on the main line that went straight through to the kitchen and dining-room, and even if there was no fuse on the line to the second bedroom, the light in that room was the same as that in the dining-room. The films would all have burned out if they had been turned on, if they had received the high voltage that went into the dining-room. I don't know who put in that installation or to whom it belongs. I don't know if this company put it in or the owners of the house. As to my being familiar with the regulations concerning installations, I am familiar with the National Board of Firemen's rules, which control these here where there are insurance companies, and I am familiar with the conditions as to who puts the wires in in my own town, but don't know anything about San Juan.

69 I do not know how many transformers were out there in April, 1908. If there were a series of transformers and they are connected up in multiple, they act as a unit and it is proper to have them grounded to protect the transformer. Should a transformer break down, there would be a fire and would blow out his circuit-breaker in the plant and most likely put the high voltage on all the lines, giving him trouble in the plant. If it were properly fused, it would simply blow the fuse and the transformer would be dead; there would not be any current from the primary onto the secondary line, as the transformer would have no current going into it and therefore there would none go out of it. If you take a series of three transformers, properly grounded, should the ground wire break on one, the other two would continue to perform the service, without danger to the transformer. Should the transformer itself burn out, it would put the current on that, the primary current on the secondary line and would burn out everything around. If it blew the fuse, everybody's lights would be out; otherwise, they wouldn't be out, because it would receive the current and the condition of the wiring is so very poor it would light it to a little string of fire. If the lights were turned on and you turned a primary current of 2200 volts into the secondary line, it would burn out the fuses if they were turned on and if the current were turned on directly; but if it went through the ground it would be impossible to say what amount of voltage would go through. While if it went direct on a copper wire, which has a very little resistance, it would burn out the films helter skelter. If it did not burn out the films, it would not burn out the fuses; it would decrease them. I found the fuses in good condition when I inspected those rosettes. The only effect of short circuiting any part of the secondary line

in that neighborhood would be, it should blow the fuses in the houses in that particular section.

70 The voltage used in Sing Sing to kill people is 1800 volts, applied, I think, in five contacts to the bare flesh. I believe they use it on the forehead. They did at one time shave the head. In applying electricity for electrocution purposes at Sing Sing, they make the most perfect short circuit with the body possible. Wood is not a conductor if it could be perfectly dry, but it can not be perfectly dry. Yes, sir, I think this floor is most undoubtedly a conductor. I have been shocked myself many times and burned. I have scars on my hands from the burns, the one on the back of my hand being the worst. The strength of current on that was 1100 and it would have killed me had it been connected properly, but it didn't do so because I didn't have a good contact; I just barely touched the wire. I was standing on the ground and had on boots. That was the strongest shock I ever got. Once I received a shock in climbing from one roof to another; one roof was possibly seven or eight feet higher than the other. I did not have any ladder and was looking for trouble and the wires ran along at a very convenient height to use them for a ladder. There were five wires, the primary below and the secondary above. I had on rubber boots and gloves, but the gloves had holes in them and I stepped on the secondary wire and got hold of the primary wire, and thinking I was thoroughly protected from it, I didn't take any precaution, but I fell off of there and down in the alley. The voltage was 1100, but I did not get a good contact that time, because I only got it through the hole in the glove. Had the hole in the glove been big enough it would have been a conductor. I fell off the wire and was in the act of moving at the time, but I didn't get hold of the other wire. Yes, sir, although I got the contact, still my hand separated from the wire, because if you are in the act of moving your hand will separate from it.

I saw the socket that is said to have killed Molina, and as to its being necessary to catch hold of the bulb with both hands

71 to turn the light, it would not be necessary to screw the bulb, but if you did not do it the case would fall down so far that you could not get the lamp in far enough to be connected. I will illustrate with incandescent light bulb what I mean by that. This screws into another one, a female. This is a male. There is a rubber that screws in the other side of this, and if that ring loosens up, it comes further out, making it necessary to hold it with one hand in order to screw the bulb in. He could screw up that socket with one hand if he would do one at a time. I do not know whether this man screwed the ring up or not. If this light were oscillating, that is, the flame, a man might possibly use both hands to fix it. If this rubber ring held the lamp from going in, he could not very well do it with one hand. As to whether if a current that went into the ground at that corner at San Cristo street would be felt by a person here making a contact, he would feel it in proportion to the amount of the voltage.

With reference to what there is about that house indicating that

a large current of electricity may have come in there at the time of the accident, the explosion of the globe and the base of the lamp is still intact, showing there was sufficient voltage to explode the lamp and jump from one leg of the lamp to the other. The globe might have been broken in some other way, but the glass has been melted around the edges. As to whether if you short circuit a lamp on 110 volts, that would melt the glass, it would burn the film if it didn't have any other way to get away, as it would do in this instance, it would burn the film out. If the film should be crossed it would burn the film and relieve itself."

72 FRED WARREN TEALE, being called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct examination:

"Yes, sir; I am General Manager of the San Juan Light and Transit Company and am acquainted with the voltage carried over the primary and secondary wires of my electric system for lighting and other purposes. The primary current carried over the primary wires, at the place in controversy, last April, was 2200 volts; the secondary current, 110, within one or two volts; there may be a slight variation. That is the voltage we intend to give a lamp in each of these residences."

JOSÉ GONZALES, being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct examination:

"My name is José Gonzales, on the first of April last I resided on St. Augustin Street, Puerta de Tierra, Stop 4, and had a provision store. I knew Francisco Molina at that time and lived about a hundred feet, approximately, from his place. I was a tenant of the house where I had my place of business, and had electric light in my place.

Q. State any experience that you may have had on the night or in the night of April 1st in handling the electric light.

73 Defendant objected to the question because it was irrelevant. The Court overruled the objection and defendant noted its exception.

"During the night of the first of April, between half past eleven and twelve o'clock, I went to turn off the light, as customary, and upon turning the button, I received a severe shock on account of which I dropped to the ground; fell to the floor and I struck one of the scantling at the entrance to the house and received a wound in the cranium. It was a 16-candle power light with a metallic socket and I turned it off through a button, a regular rubber key."

Cross-examination:

"The reason I was up between half past eleven and twelve was, I had already closed my place of business and was counting the

money I had received during the day. I have four lights in my house and they were all burning at this time. I got this shock when I went to turn out the first light, which is a hanging light." (Witness is asked to explain with his hands how he went about turning it off). "Standing on the floor, which is wooden, I reached up with one hand and was rendered unconscious, remaining so for fifteen minutes. My wife was there, and after I came to, I got up from the floor and stood up. After the accident I took some precautions and with a piece of cloth I turned off the other lights which had continued to burn during the time I was lying on the floor insensible, the only one which was extinguished being the one of the socket which I had turned off. As to those other three lights still being in service, the installation is intact and I had no repairs made to it; the party to whom I sold the place is still using it. No,
I didn't light this same light again after this accident, as the
74 globe burned out so it was out of order and I left it in that
shape, useless; nor have I used it again. I don't know whether the other fellow has done so or not."

Redirect examination:

"My wife lives in the Marina here with me. She is slightly ill and cannot go out.

No, the globe did not break, it burned out only—that is, the film on the inside burned out."

BELEN REQUENA, being recalled as a witness in her own behalf, testified as follows:

Redirect examination:

"My husband's income was about $100.00 per month, approximately. He had three houses that he was the agent for in Santurce, two belonging to Mrs. Ursula Vixa and another to Mr. Manuel Laugier. From the former, he made between ten and twelve dollars and from the latter six or seven dollars. In Puerta de Tierra he was also the agent for two other houses for Frederico Dimas, and he earned between ten and twelve dollars per month. The house of the Susesion Dorado, the house in which I live, he had under lease. Yes, sir, he rented part of that. The next house where Mr. Paniagua lived. The total, approximately, which he received from that source of labor per month was between thirty and forty dollars. That was in April. My husband was a man of good habits and devoted his time to many lines of business. Besides administering
these houses, he had a distillery. As to his doing any con-
75 tracting, he used to build houses and sell them afterwards.
He was also agent for the firm of Alvarez and used to go out in the Island to sell liquors. His income from that source depended upon the amount of his sales and sometimes was ten dollars, sometimes more. The average income of my husband for one year before his death was between $100.00 and $120.00 or $130.00 per month."

Cross-examination:

"My husband was engaged in the sale of liquors, building houses and selling them, and some other small business; some people called on him to see if he could secure loans on property for mortgages and he secured the loan and they paid him a percentage. As to where he got the liquors which he sold, he bought the alcohol from the firm of Alvarez and prepared some rum and anis. He had no distillery; he just bought the alcohol and manufactured it into rum and the profit on that business was for himself and partner, Jorge Colombani, brother of Luis Colombani. I don't know the whereabouts of these parties now; they live in Puerta de Tierra, but whether they are there today, I cannot say.

I could not state, approximately, what my husband received as profit from the distillery on manufacture of this rum, but he always said he earned a good deal from that source. It was conducted according to law, as he paid his taxes, his license. Yes, sir, I testified in the Municipal Court of San Juan against Jorge Colombani for keeping an illicit still in my house and stated upon that examination that my husband was in partnership with him. I also stated at that time that I did not know whether it was a legal or illegal still,
but as we did not work there they did not manufacture any
76 liquor there."

Counsel for plaintiff then offered in evidence receipts for amounts paid for electric light consumed dated December, 1906, February, 1908, March, 1908, April, 1908, showing that the payments before and after April 1st, 1908, were practically the same amount monthly.

They were admitted without objection and explained to the jury.

The plaintiff having rested, defendant moved the Court to direct a verdict for defendant, which motion was overruled and to which ruling defendant noted its exception.

Testimony for the Defense.

FRED WARREN TEALE, being called as a witness in behalf of the defendant, testified as follows:

Direct examination:

"My name is Fred Warren Teale; age 38; profession, consulting engineer. I am an electrical engineer and graduated in 1891 from Tuft's College. As to my experience since that time, I have been connected with the Westinghouse Company, the West End Street Railway Company, with the Boston Elevated, the Trinidad Electric Company, the Demerara Electric Company, the Camaguey Electric Company, Cuba, the Dartmont Electric Company, the Montreal Engineering Company, and the Porto Rico Power and Light Company.

I have charge of the lighting business of the San Juan Light and Transit Company, it is under my general supervision and I had such supervision over it last April. Mr. Robert McKensie is known to

me and was employed by the San Juan Light and Transit
77 Company in April last as Superintendent of the power station and lighting house of that Company.

In April, 1908, the San Juan Light and Transit Company was supplied by power from its power plant in Santurce. I could not tell, without looking it up, when the Comerío power came, but think it was after April 1st. With reference to April 1st and the days immediately preceding and also with reference to the power lines through Puerta de Tierra and what Mr. McKensie was doing, we were at that time going over the whole system and inspecting and making sure that everything was in first-class condition. As to how far that inspection reached, on the night of March 31st, Mr. McKensie came in my office about four o'clock on that afternoon and I asked him ——"

"So I understand that this accident took place on the night of April 1st. Mr. McKenzie reported to me the progress of the work every day and had reported to me the day previous to this accident. That report was the afternoon of the accident, April 1st."

"I did have occasion to verify this report after this accident took place, and I found Mr. McKenzie's report to be correct.

"At that time two transformers were being used in the Puerta de Tierra section. The purpose of a transformer is to reduce or increase the voltage by any specific ratio—in other words, to reduce it from 2000 volts to 100 or to 200 or reverse the process and raise it from 100 to 2000 or any ratio. The transformers are so wound that the voltage can be either raised or lowered according to the transformer. You find on those lines in front of the houses there are two sets of lines, the primary and the secondary, as a rule, if we are lighting any houses in that vicinity. There are both the primary and the secondary. The primary lines convey the current at the station voltage, after passing through the switch board
78 which has the circuit-breakers and safety devices so as to make the current as nearly safe as possible. Now the secondary current is connected with the lowest tension side of the transformer through fuses which if the current exceeds a certain amount these fuses blow and cut the transformer clear from the line. That cuts out the high current naturally if the fuses blow. As to how we get that small current into the houses along the line, the transformer is wound with two coils around a common core, one coil which is a very fine wire through which the primary current passes and a very coarse wire through which the secondary current passes, both of which are insulated. The electricity passes through the small wire into the larger where the current is of much less voltage, depending on the voltage required. In this case it is from 2000 to 110 or 120, as the case may be. The transformers are located on the poles along the line. We take a group of houses which we decide to serve and we place one or two transformers. If it is a long-stretched-out place, we put two transformers, and if close together we would put one transformer of the same size, and where there are two we put the secondary wires of these transformers together and then connect your houses from these secondaries. You

distribute your load equally on the transformers and give each house the same voltage and same conditions. Yes, sir, we had two transformers out there and both were connected with the high tension wire from the power-house and the transformers were connected with each other. We took off the secondary voltage so that as it went into the house it was 110—in other words, we stepped it down from 2200 on the primary lines down to 110 on the secondary. If the transformers are overloaded and an excessive amount of current passes through them, they are so arranged that they would blow. Yes, sir, if that high tension wire was overloaded and blew out
the fuse on the transformer, that would have the effect of
79 cutting out the secondaries from that transformer; the current in the secondary is induced by the current running from the primary. The secondary lines have no fuses outside of the transformer; each house is protected by its own fuse. These secondary lines run along the poles to the houses which are set back in from the line. Where the secondary current reaches a house, there is a fuse block for the protection of the people using the current. A fuse block is simply a porcelain disk or other non-conducting material in which there are four terminals. The secondary lines connect with two of these terminals and the lines of the house connect with the other two and between these points fuses are placed, the capacity of the fuses being rated according to the number of lights in the house and the size and the number of lights which they may be expected to carry at any time. For instance, if a house is expected to use 32 c. p. lights, you would put in fuses of sufficient capacity to carry 32 c. p., although they may only be using 16 at the time; and in case of a short circuit, it would free the house from outside connection. The object of these fuse blocks is, in case of short circuit or overload, to free the house from the connection with the wires. If by reason of breaking down of the primary lines the primary current became turned into the secondary wires, it should blow out the fuses leading into the house.

Your question, "In the circuit in Puerta de Tierra, the circuits supplied by these two transformers, are any of these houses rigged up with fuses that would stand a 2200 volt current?" will have to be explained before I can answer it. The voltage is a question of pressure. The pressure does not melt the fuse. That is the current. Now, if you get a sufficient pressure, if you increase the pressure ten times on that line and the current is turned on, you
would get ten times the current and it would blow the fuses
79½ and it would be the current which would blow the fuses brought on by the increased pressure. The fuses are blown by the flow of current through them as a result of increased pressure or a short circuit. A short circuit means simply a bringing of two wires together which causes a tremendous rush of current which at that moment may be almost anything, which always burns out the fuses and melts the wires.

As to whether any house in that section is so arranged that the current on the primary lines could be turned on the secondary lines without blowing out the fuses, and as to whether any of the houses

have fuses that would stand a 2200 volt current, so that the current sent through the primary line would not blow the fuse—no, they are fused for the ordinary voltage. I have been in this house; I think it was Saturday afternoon last, when I went through the drawingroom, diningroom, into one bedroom, kitchen, and then down into the basement. I did not go up to the attic, and consequently don't know anything about the wires in the attic, as I did not see them. The socket in the diningroom is an ordinary wall socket with a brass cap.

I have had electric shocks of all kinds and descriptions, the severest I ever had being 1100 volts, which I got by taking hold of a wire which I supposed was dead and found it was not and being grounded at the time. It was a rainy day and we were clearing the grounds. I was sitting astride a tree and it was due to an accident that the shock occurred. I took hold of the bare wire and swung around under the limb of the tree and the first thing I knew I was hanging from the limb of the tree. I certainly did break loose from the wire and my hand was burned slightly across the ends of the fingers, just the epidermis.

I have repeatedly received 500 and 600 volts and burned my hands. I was at one time laid up for thirty days and had
80 both my hands burned clear to the bone. That was due to confliction of orders. A man turned a switch which was supposed to be dead.

With reference to the usual course pursued when you wish to handle wires which have 2000 volts on them and what precautions are taken about touching them, as far as the ground is concerned, if one is in a plant, power station or anything of that kind, you take a board, inch board or piece of plank, lay it on the floor and stand on it, taking hold of one side of the socket at a time, and that board will be sufficient. If you stood on a brick floor, it would be liable to kill you, but not necessarily. It depends upon the constitution of the man and a great many conditions. Yes, sir, it also depends upon the dampness of the ground, but that is usually pretty damp.

The floor in the diningroom of house of plaintiff was a plank floor supported by wooden beams from the under side. If a man stood on that floor and reached up with one hand to a stationary socket which was above him, with 110 volts on that wire, he wouldn't get any shock, and under ordinary conditions, he wouldn't get one under a heavier current. If he had gotten one standing on the floor and reaching up to this light with his hand and the shock had been sufficiently strong to kill him, the effect on his body would be this: It has a tendency to contract the muscles of the body and a man will fall always if he can. There is the contraction and the relaxation of the muscles and a man would fall practically instantly. He would not be liable to stand on the floor rigid hanging on to the light unless he were standing in an exactly balanced condition and then the shock would throw him out of that position.

Yes, sir, I went into the cellar below, which has an earth floor and which was not very dry; nor wet; the same as you find in an ordi-

nary cellar. There was no mud there, but just the ordi-
81 nary damp floor which you find in a cellar in which water was not running. A man standing on that floor and touching the electric connection would certainly get a shock—that is, the current would go through him and down into the ground and complete the circuit. Glass is not a conductor, but one of the best non-conductors known, of electricity, so that if a man were to take hold of the glass globe and not touch the brass part, he wouldn't get a shock with any current that is used here with 2200 volts; he would have to come in contact with the base of the lamp and could not possibly get the shock otherwise. Taking an ordinary lamp, such as one you have just handed me, which is 16 c. p., if a 2200 volt current were turned into that lamp, it would burn out the film at once. As to whether that would be the sum total of it would depend on the current. If it were short-circuited, it would not only melt the film, but it would melt the wires by going back into them, the socket and everything, because you at once establish an arc and it would follow right along the wire. This lamp is so constructed that this is brass and this outside is brass and connected with the other wire; this inside is brass and connected with one of these wires which pass up through a piece of platinum and when this is screwed into a lamp in the socket there is one terminal which is connected with the lamp and if you had 2200 volts and it started the arc across, the distance here is so short that it would follow back on the wire. The rubber is put on there to keep it in place so the canopy won't slip and get up against the brass part.

In reply to your question, "If we have this case, of a house with five lights in it this size, and upon inspection after the accident happens we find the fuses on the lamps in the house, on two of the lamps, are in good condition, and that the other three lamps had no fuses at all, would it be possible to say whether or not a current such as is on your primary lines had been turned on to the secondary wires running to this house?" There would be no rush
82 of current for the reasons already explained. It would have burned out the lamps and caused a serious fire.

If this man was killed by putting his hand up on the light bulb and screwing it into place or trying to unscrew it, there must have been a leak, but the fact that the current did not follow the wire back shows there was no short circuit; otherwise, it would have continued following the lines and would have followed them back and burned out the socket and set the house on fire. It would have kept on until the fuse had blown outside, and the fuse did not blow. As to the supply of electricity along those poles in front, there is no other besides ours. If we take it for granted that this man was killed by reaching up and getting a shock from this lamp above him, the maximum shock which he could have gotten, provided there was a direct wire running from the primary line to that place, would be his resistance plus the resistance of the floor, the current which would follow through that. The resistance of the floor would be two or three times the resistance of his body; hence I would say that

he could not have received more than 500 volts if the primary current had been at that socket.

As to my wanting the jury to understand that that man was not killed in the way the evidence shows here and that he could not have been killed according to the way I look at the phases of an electric shock, I say that a man in normal condition, the amount of current which could pass through his body standing on the floor as he was, the current would not only have to pass through his body, but through the floor and through the foundation and the amount of resistance which that current would have to go through in order to complete the circuit would be so great that the effect would be, he would never receive more than 500 volts—in other words, a man in normal condition would not have been killed. If this man had been standing on that floor barefooted just after
83 washing his feet, so that his feet were damp, and if the floor were damp and the primary current were turned in on that house in the same way, that would undoubtedly have killed him, but he would not then have received the full amount, because there would be the resistance of the wood. As to whether he could have received the primary current under those conditions without the effect upon the house in so far as the fuses and lamps were concerned which would be visible afterwards, the other lamps, I don't think he could; nor could he have received that 2200 volts if the transformer and our lines outside were in good condition. Yes, sir, Mr. McKenzie reported to me the evening before the accident that they were in good condition. The house installation belongs to the customer and we have absolutely no right to inspect it except at the request of owner or tenant. The installation may be made by anybody; anybody can have one made. As to whether if anybody had an installation made in his house and asked our Company to connect up on the outside, we would first inspect the installation, at that time we inspected it before connecting anybody, up to the present time when there is a Municipal Engineer, who was appointed at our request. There was none at that time. The original wiring was inspected by us before, but that does not prevent anybody from later making any other connection. Our Company did not make the installation in this house; our lines cease at the outside."

Cross-examination:

When application is made to us for a meter for a house, we do not inspect installation if it is a new one. If, on April 1st, or prior to that time, application had been made to our Company to furnish a meter so that a light might be installed, we would have given the system a general inspection; but we had no authority
84 to condemn it at that time, had we found the installation bad and unsafe, we would not have placed that meter there and turned our current in.

As to the nature of the injury, if our 2200 volt current had been grounded that night, the primary current, and this deceased received that current less the resistance of the floor and whatever resistance that current may have met in the ground or in the floor, but the re-

sistance so reduced it at any rate from 2200 that he received, as I have estimated, from 500 volts up, if received by him standing barefooted on that floor with the circuit completed in that way through his body, he would have been killed. There are no electric currents running in front of that building except ours and anybody getting chocked by electricity must get shocked by our current."

RODERICK R. MCKENZIE, being called as a witness in behalf of the defendant, was duly sworn and testified as follows:

Direct examination:

"My name is Roderick R. McKenzie and I am employed by the San Juan Light and Transit Company. I was so employed during last March and April, at which time we were repairing lines and building lines in Puerta de Tierra and various places, the primary as well as the secondary lines. As to our object in repairing, we were putting up new poles, which made the changing of the cross-arms and the replacing of the wires necessary, these poles taking the place of those that had rotted at the base. We were not replacing the wires, as those were in good condition; we were
85 replacing the poles. There were two transformers on that circuit in Puerta de Tierra, which were connected up in multiples, and the house in Puerta de Tierra where this man was killed was supplied from these transformers.

As to how far we had gotten with our work of inspection and repair, on April 1st, I walked the line from the siding of what is known as the "Jail Switch" to what is known as the Old Railway Shops, at Stop 8, the Wireless Station, and in as far as the American Railway offices at Stop 2, which ground I had gone over the last day of March, and on which the light lines had been repaired and put in good condition. These two transformers I found in perfect condition on March 31st and April 1st.

I went to this man's house the day after his death, in the morning, with my assistant, Pedro Estasen, who is here, my object being to see what the trouble was. Yes, sir, we inspected the electric wires and things in the house and outside. On the outside, I had Estasen look at the porcelain cut-outs on the balcony. He was not tall enough, so I got up and saw that one of the Edison cut-outs was uncovered. There is a cap with a mica covering so that you can see whether the fuse is blown. One of the covers was off, but that fuse was intact and while I was about to touch the other with my hand, someone told me I could look around but not to touch anything. But I could see they were in good condition. There were fuses on both sides of the wire leading into the house. We went into the house and looked around, which was all we could do. We were not allowed to go up in the garret. These transformers are grounded, the object being as a source of protection. Being properly grounded, if the transformer breaks down in any way, the primary current which goes into one side of the transformer, passes into the ground; if there is no ground, then it goes on to the second-

ary line. I made inspection of the ground lines to this
86 transformer the day before when making this inspection and found them in perfect condition. There was a ground for each transformer. We had never had any complaint from the people in this house that the installation was in bad condition, up to that time. Such a complaint would have been made in a formal manner to the office and turned over to me for investigation. I had been in charge of that line about two years. I made an inspection of the ground wires to the transformers the day before and the day after the accident. The day after, I found that one of these grounds had been broken by something which struck the side of the pole. The wire was intact the day before, that is, when I inspected it on March 31st or April 1st. The installations of that house belong to the owner, not to the Company. The Company's wires terminate at the meter, on the outside. I took that meter down probably four to six weeks afterwards, but cannot say at the time what condition the fuses on the blocks were in. The taking of this meter out had nothing to do with the accident; it was due to delinquency in the payment, and up to that time the light had been satisfactory as far as I know. Between the time that this man was killed and the time I took out the meter, I had received no complaint that the installation was not in good condition; nor had any repairs been made on the house to my knowledge.

Cross-examination:

Our wires terminate at the meter, which was on the outside of the house. Yes, sir, I did pass inside of the house. Further than that, as to the other wires in the house, the installation and so on, I had no concern with and presume I looked at them out of curiosity.

87 On the 31st of March, I commenced inspection at what is commonly called the "Jail Switch," at Stop 8, where the American Tobacco factory is, at that siding. Then I came toward San Juan and got as far as Stop 2 that day. My inspection consisted in seeing that the poles and overhead trolley lines are in good condition. I just walked along and examined each pole, but did not climb them. When I came to the transformer, I did not climb the pole and I didn't look at the fuses. These two men were that day working at Stop 3. No, sir, on that day, I didn't look at the transformer any closer than I could see it from the ground."

Redirect examination:

"There is no way you can tell from looking at the outside of the transformer whether it is in good condition or not. Inside, besides these two coils of wire, it is filled with transit oil, fusil oil. I examined this transformer about six weeks afterwards and found the fuses still intact."

Recross-examination:

"Nobody else had been around those transformers during the six weeks that elapsed after I saw them, as they would come to me first,

because I was directly in charge of that. As to something getting into the oil of this transformer, they are air proof and dust proof. You could break the cover and pour in water as far as that is concerned; not under ordinary conditions. They sometimes burn out owing to overloads, short circuits, &c.; there are many causes.

From my examination prior to April 1st and my examination afterwards, I am satisfied that the transformer was in perfect condition on the evening of April 1st. If it were all right on the morning of the 2nd, it must have been all right on the evening
88 of the 1st, as you say—in other words, if a fuse is blown out or if this insulating or deducing oil has been drawn off or anything else has happened so that the transformer no longer performed its function on the night of the 1st, then it would not be all right on the morning of the 2nd.

Yes, sir, I had been all along this line and had inspected it on the 31st of March and saw it was apparently all in good condition: the two transformers were also in apparently good condition, and on the morning of April 2nd, after the accident, one of the transformers at Stop 3 we found in good condition and the other we left on the pole and disconnected, because the foreman felt the outside of the transformer and noted that it was warm. That is on the transformer about Stop 6, between 6 and 7; so we pulled the Puerta de Tierra switch out for the night. This was after the accident, that same night, about half past twelve. Yes, sir, I do recollect that there was something wrong with the transformer at Stop 6 that same night and I did not examine it for some six weeks after this accident. When I did so, I found the insulator had become charred, not burned, but charred. I could not say as to whether that resulted in the primary current passing to the secondary current. I did not find any other defect in the transformer at Stop 6. The fuses were all intact and everything was in place. I do not know what would have been the effect of a defect in the insulating oil in the transformer, and I do not know if anything else could have happened that would have done any harm. I am Superintendent of the electric works of this Company and am general utility man, but it doesn't follow from that that I am an expert, which I never claimed to be. As to whether I consider myself competent, if I would not understand a thing like that, to pass along this line and tell whether it is all right, passing along is all that could be done from a general inspection, either by one who understood, or one who did not, unless
he made an internal test. Yes, sir, I reported to Mr. Teale,
89 on the 31st, that I found the lines in perfect condition. In order to test a transformer, it would have to be taken down and sent to the shops for calibration. I said the trouble in the transformer at 6, with reference to the insulator, was that it was charred. As to whether it should be sent to the shops to find out what the effect of a charred insulator on the current would be, that would be the proper means of doing it."

Redirect examination:

"Yes, sir, there were two of these transformers and one of them was where this ground wire was broken, at Stop 3. The other one was at Stop 6. It was the transformer at Stop 6 that I cut out the next day. The one with the broken ground wire was at Stop 3. The ground wire in the one at Stop 6 was in perfect condition."

"I have been working with electrical apparatus about fifteen or eighteen years, the scope of my duty, central station; building lines and power houses, constructing, maintaining and operating."

"The transformer near the ice factory at Stop 3 is on an octagon, long leaf, yellow pine pole.

"As to what side of that pole the ground wire of the transformer at that place was on, it was parallel to the road just in the center of the pole, but not on the side on which the road was. The pole stands almost at the end of the switch at the turn-out at Stop 3, the ice factory end of the San Juan Light and Transit Company, on the north side of the track. The transformer pole stands on the south side and the indications were that the wire was parted by the hub of a wheel. (Witness indicates with post at corner of the jury box.) Your understanding is correct—that the wire was not down at the side of the pole next to the road and that it was at right angles to the road. Yes, sir, the transformer at Stop 6 was connected with the ground. There was some other electrical disturbance in that section that night. On the morning of April 2nd at 7:30 I was at the scene of the accident. The night before, I was out in Rio Piedras and returned on the last car and there was a message left at the Hotel Las Palmas. I went to bed and the night man did not notice me going in. He woke me up about half past twelve and told me there was trouble on the line, so I called up the plant and asked them what was wrong and then discovered that my foreman had gone to the scene. I didn't know what had occurred, as I didn't go out because it was raining heavily. My foreman is Brijodore Brevis. Yes, sir, on the morning of the 2nd, I was at the scene of the accident at 7:30 and I also went to the scene of the other disturbance, where I found they had been washing and a lot of dirt had accumulated betweeen two lines with porcelain insulators which passed through the floor and it was wet and moist and had short-circuited at this particular point that I speak of. That was in the house of Infanzon, a tenement house, and was some three or four hundred feet from where this man was killed. That house was lit by electricity and the current was supplied by the secondary current between these two transformers that we have been speaking about. When the short circuit was made, for some seventy-five feet back from where the wires entered, the insulation was burned, there were also indications of burning, of having caught afire. This short circuit was due to the moisture and dirt which had collected there. It was sort of a laundry and they had swept all the dirt up between the two wires for some space on each side. These insulators passed through the flooring and came along the ceiling to pass to a grocery store that was there some one hundred and twenty-five feet away."

Recross-examination:

"I think the fire started because of the dirt that was in there. There were some tubs about and I think it was a laundry. At
91 any rate, they had used it for washing purposes on that balcony. It positively could not be a store. That was about 400 feet from this place where the accident occurred, more or less, and the short circuit might have caused the rupture to the nearest transformer, which was at Stop 6. If there was ample resistance, it ought to have blown out my fuse, but there might have been a partial leak through the coils. As to whether it was this other little occurrence at the laundry, or something else, it might have been."

FRED WARREN TEALE being recalled as a witness in behalf of the defendant, testified as follows:

Direct examination:

"Yes, sir, I have heard Mr. McKenzie testify. In order to answer your question as to what would be the ordinary effect, electrically speaking, of the kind of short circuit which Mr. McKenzie testified as having taken place at this laundry or whatever it was, on the transformer or on the secondary or primary lines, I want to explain the physical conditions first. The transformers are fused to carry the total and an overload for the whole circuit of houses in that section. Now at 11 or 12 o'clock at night only a relatively few lights would be on, perhaps 5% of the total number of lights. A fire occurring, which would occur with low tension voltage because soapsuds and dirt piled around the wires makes an excellent conductor, and this piled around the wire that touched the ground, while it would cause the heating in there it would come on the nearest transformer and would overload it and cause the charring in the secondary coil of that transformer. At the same time, on account of the other houses being off and this being nearest to the load, the fuses might not have gone. Those transformers being connected the one with
92 the other, if one of them had no ground wire and the other has a ground wire, the two connected together are practically the same as one. It is a common coil and they are both together, parallel. Both ground wires would have to be broken to produce the effect. If the ground wire at No. 6 were not broken there would be a double protection. There is no need of more than one. Yes, sir, the transformers are parallel. Parallel and multiple are synonamous terms."

Cross-examination:

"As to whether that ground wire at No. 6 would have carried that current into the ground, it would had there been a sufficient leak. The leak across there was practically of no capacity at all. If there had been a rush of current there it would have gone to the ground, but there was not a rush of sufficient capacity. As to there being enough current to char the insulator that was on the secondary of this other line running to the house, and as to how it got there and if it had

to go over the primary line, you don't follow me. Where the secondary wires lead to the house where the fire occurred, these are connected with the secondaries of both of these transformers, but nearer the one which showed the carbonization afterwards. When the current started there, due to the moisture and debris, there was quite a flow of current through there, undoubtedly sufficient to overload the secondary of that transformer, the other one being on the extreme end did not help it out. That would have caused, if the carbonization was sufficient, a leak across, which was a small one proved by the fact that only the socket was broken in this room and that the current did not continue to go across. Otherwise, it would have burned all the fuses in the houses. This man closed that circuit by standing on the floor and reaching that socket.
93 When he let go, the effect would be destroyed instantaneously, the whole thing. But in the meantime, it would have blown every fuse. There would have been a flash. For instance, you take two wires at the end of a line and put them together and they melt right straight back almost instantly. In other words, if the full 2000 volts had not met resistance and had not been so reduced, then it would not have destroyed him in the way it did, but it would have blown out the other fuses in the house, if it had been a short circuit. As to what the effect would have been on the ground wire at No. 3, the two transformers being parallel that way, the breaking of the ground wire at No. 3 did not enter into the case at all. It is merely a coincidence. It need not have been brought in evidence because it has no bearing whatever. If the transformer post at or adjoining the transformer at No. 3 took afire, or if the post were wet, as it was a rainy night and there was leakage across, there would be a tendency for the current to seek the ground. The transformer at No. 3 being in perfect condition, there would be no chance for it to escape, but it would not affect the condition of the transformer at all. So regardless of the transformer at No. 6 and the ground wire at No. 6 being broken we had the result of the charring of the secondary wire. As to how it could affect the ground wire at No. 3, they would act simultaneously. No. 6 would get the bulk and No. 3 would get the balance. There would be a certain flow across there which would cause the charring. If the pole had taken fire there, there undoubtedly would have been a pretty good ground there.

JOHN EDWARD THORPE being called as a witness in behalf of the defendant, was duly sworn and testified as follows:

94 Direct examination:

"My name is John Edward Thorpe, my profession, electrical engineering, and I am superintendent of the lighting company. I graduated from the Baltimore Polytechnic and Electrical Engineer School. My experience in electrical work is, as follows: I started in with the Westinghouse Company in their students' course to go through all the course, the testing department and the railway breaking department and the building of sub-stations and plans and

appraisements and lines. I left them and went with the Pullman Light and Power Companies. After two years with them, I went with the Brooklyn Rapid Transit in the testing department and then came down here in September, 1905, and have been here ever since. Yes, sir, I have heard Mr. McKenzie's testimony as to this fire in this house and the conditions under which it occurred. As to whether that would or would not have affected either of these two transformers, it would affect the heating of the transformers, which would cause the charring of the insulation. Wherever an electric current exists, there is a voltage. Now the current is inversely proportionate to the resistance and directly proportionate to the voltage. Now we will suppose that the secondary circuit leading into this laundry had a certain resistance, the resistance of the volume of an incandescent light which is about a hundred o-mes, that is on the standard of a 32 candle power lamp. We will suppose that the wires came together as Mr. McKenzie stated, which would reduce the resistance enormously; the minute these wires come together you get an enormous rush of current, because, as I said, the current is inversely proportionate to the resistance. Now this increase of current naturally would heat the wires because we have to always calculate the size of the wire to carry certain currents, a certain size of wire has a limit to what it will carry, and the minute you
95 put more on, it will heat, and it is instantaneous in its heating effects. The minute these wires came together through this rubbish or moisture, or whatever it is or was, the current in that whole system would be increased and it would be increased until it burned something loose, and whatever current flowed in the secondary, would naturally flow in the primary by induction. Any current flowing in the secondary would cause a proportionate current in the primary, the wires being in proportion and ratio of 20 to 1, that is, for every turn on the secondary you have 20 turns on the primary; the current, although only one-twentieth in size, would have the same heat. The combined heat of the two would cause naturally the charring of the transformer, which would be almost instantaneous, so that the short circuiting of the wires at this laundry would almost instantly cause the charring of the transformer. When that transformer charred in that way, its capacity was slightly affected in the discharge of its duties of an ordinary normal transformer. As to how that would have effected the lights in this house where the accident is said to have taken place, and if it would have increased them, it depends on whether the primary and secondary came together. That is a question that could not be answered without making a test. You ask about the probability that a charred insulator in performing its full duty as it should be in its normal condition, would there or would there not be a leak on to the secondary lines? There would be in a slight degree depending on the charring and insulating qualities of the oil. The oil is put in for that very purpose. It is only in late experience that we have put in the choke oil. Yes, sir, the leak would increase the current on the secondary lines leading to this man's house, and it would be greater, so that after this fire in the laundry, or instantaneous char-

ring of the transformer, the current on the line to the house
96 would be increased."

"As to whether there is any cut or shut-off between this secondary and this short line which runs into this house where the accident took place, there is not. It is not policy to make any protection between the transformer and the house, just for the reason explained by Mr. Teale, the current would become inutile. In general practice in the States no fuse should be carried on the neutral going into the house. The protection to the house is made at the ground wire of the transformer or you can ground it at any place. You don't have to do it at the transformer. You may do it on the secondary wire, so that there is a ground. You might put it in New York. There is a difference of potential between this and some other courses. You make the earth the same potential as the primary line.

If that man was killed as is shown by the evidence, and how it happened if there were no other currents except ours in the vicinity and as to what, in my opinion, caused it, that depends a little on the condition of the man. No one can lay down a fixed rule of what voltage would kill anybody. One hundred and ten volts have been known to kill people. Yes, sir, I have heard the testimony as to the physical condition of Molina; that he was a man in good normal condition and heart good and would say that a hundred and ten volts would not ordinarily kill a man in those conditions. Admitting, for the sake of argument, that Molina was killed by electricity that night and as to how, in my opinion, it happened, we heard the ground wires were in good condition. If that is the case, no high tension went into the house. If killed, as to what must have occurred on the main line, the grounded wires must have been broken. There could not have been connection with the ground on the secondary system if he were killed by a voltage of over a hundred and ten volts. In answer to your question, if that
97 man were killed by electricity, how do I explain it, if, under ordinary conditions a hundred and ten volts would not kill him; what supposition? The only thing you can suppose is that there was no ground wire on either of the transformers. If the ground wire protection were there, it would not have happened. Yes, sir, I have heard Mr. McKenzie testify that the ground wire on the transformer at Stop 3 was broken. I have also heard him testify as to the effect on the wire at this house and I have myself testified as to the effect that would have on the transformer at Stop 6, and, taking that condition as to the transformer at No. 6 and the other transformer with its ground broken and Molina being killed by electricity, I should say that he could not have received more than a hundred volts, not if the ground wire was intact at 6. It is impossible.

I have seen two people killed by electricity and a great many injured; in fact, have been burned myself, the limit of voltage I have received being 2200. The effect produced on me was, a pretty severe jar and I was sick at my stomach for quite a few hours and it doubled me up. It burned me and left a mark on my left hand."

(Witness shows mark to the jury.) "As to my having any experience to tell that any hundred volts would produce the congested condition which the medical experts have testified they found as to this man, it is not the voltage that kills people, and stout people are presumed to pass current very much quicker and easier than a thin person; thin people feel the effects of it to a greater extent.

Yes, sir, I am familiar with the custom in the States in the Westinghouse Company and others of the method of putting up transformers and inspecting them; I was in that department for two years. A transformer is mounted on a pole with two fuses, and the transformer is fused, by the way, depending on the manufacture,
for from 15 to 25 or 30 per cent. of its capacity because the
98 transformer is able to carry 10 or 15 per cent. more than its
normal capacity. And two fuse blocks, and then the current is connected on to the neutral point of the central circuit. The coil is a laminated iron core, many pieces of iron built up, and around that is wrapped this insulator, which is generally varnished cambric and mica, and then another sheet of mica and the frame on top of that. The limit of inspection is a six months' inspection and a grounded current should blow a 25 amphere fuse, to the ground; attached to the ground or on a water pipe, it should blow this 25 amphere fuse. An inspection is made every six months, and that is what we carry on here. With reference to the installation of the wires of the San Juan Light and Transit Company, these transformers and house connections, are up to approved standard, as far as I know."

Cross-examination:

"Returning to this laundry, if it was a laundry, I think undoubtedly the result of that extraordinary heat which has been described would be to affect the secondary wires in the transformer. It would, of course, blow out the fuse. It would induce the same proportion in the primary as would be induced in the secondary. You are talking of the laundry? Well, it depends on whether it was in front or back of the fuse. Yes, sir, we are supposed to so protect these houses that if the wires reach that condition, they will blow the fuse, but no one has proved which side it was. We are supposed to have a fuse that would blow, and as to whether the wires are put in front, it depends on whether the customer wants it. As to the laundry, I don't know whether it was in front or back."

99 PEDRO ESTASEN being called as a witness in behalf of defendant, was duly sworn and testified as follows:

Direct examination:

"My name is Pedro Estasen and I am employed by the Porto Rico Power and Light Company. Yes, sir, I know the San Juan Light and Transit Company and have been working for them for about seven years. At the beginning I was a wireman and am now Assistant Superintendent of the lighting department. I have had

occasion to make connection with wires, installations in houses, and things of that kind.

I know where Francisco Molina lived and went to his house on the 2nd of April between half past 7 and 8 in the morning, with Mr. McKenzie. I had been to that house before, as, when I used to have the meter reading, I used to go every month to read the meter. I first went to that house to read the meter about five years ago, it having been put in by myself when I was wireman. At the time I put up that meter, I think there were four or five lights in the house. There was no light in the dining room or kitchen, just in the front part of the house. The Company did not put that installation in the house. When I put that meter in for Mr. Molina about five years ago, the installation was old, but it was in good shape. At the time I was wireman, nothing was added to the installation in that house, and after I was in charge of the wiremen, I don't remember having sent any man out there to do any job. I do not know who put this installation in the kitchen and in the diningroom. I knew Molina."

"With reference to what Molina told me, he had a cafetin in St. Agustin Street and he asked for current for that house. I
100 had to go to see the installation and I asked him who did that job and he said he did. As to my knowing whether Molina had any experience with wires or wiring or work on electric lights, I saw him first one time fixing a socket, but that is all. I don't know if he knew how to make a proper installation. One night when I was called to fix a light in that cafetin, he had the socket out and was already making the connection. As to whether he made the connection himself, you know sometimes the wire inside breaks and you have to make a new connection, and that is what he was doing that night, not quite splicing, but making a connection from the wire to the socket."

Defendant rests.

Testimony in Rebuttal.

GABRIEL PIZARRO being recalled as a witness in behalf of the plaintiff, testified as follows:

Direct examination:

"Yes, sir, I am a baker and was working on the night of April 1st at Stop 6 in the house of Juan Sierra taking bread out of the oven. As to my experience that night with electricity, while I was taking the bread out we saw a flash of the light. It seems there is light in the shop, and at that time all the wire in the bakery caught on fire. The wire was in the middle which communicated with the house, on the ceiling. I went to call the clerks, who were sleeping, but did not touch the wire. I threw water on it and it got more ignited. Afterwards, the wire touched me, because they told me to break it, and when I pulled, the wire was broken
101 and hit me on the leg. It shocked me and I was rendered unconscious and from there went to the Emergency Hospital."

(Witness shows scar to jury.) "The wires in that building were not down on the floor; the one I broke was the only one that touched the ground when I broke it. No, sir, those wires did not go through some of the planks from one room to another; on the ceiling. This is a one-story house. I don't know of any laundry in my building or near my building. I have worked in that community about eight months. The house is owned by Juan Sierra."

BEN CORNWELL being recalled as a witness in behalf of the plaintiff, testified as follows:

Direct examination:

"Yes, sir, I have heard the testimony of Mr. Teale and Mr. McKenzie with reference to what occurred to the transformer at No. 6. As to my opinion as to what was the trouble with that transformer and what condition was produced that night, it is undoubtedly true that the transformer in some way,—the high side jumped over to the low side no doubt, and just the manner in which it did it is impossible for anyone to say. It evidently got there in some way. The current went over from one side to the other. The ground wire would have nothing to do with it except that the earth would have a charge of electricity. There were not proper fuse connections in the transformer or it would have blown out as it has been shown that there was so much electricity that it heated the wires until the insulation melted off and that should by all means have opened up the fuse connection on the primary side, as it was a tremendous charge; furthermore, it should have opened up the fuses on the secondary side going to the house. The current coming in the house of Molina came in through the regular
102 wiring, the secondary wire. It being grounded, the secondary wire had on it all that voltage at that time and it should have fused out; it should have blown out the fuse or at once cut them from the transformer. It charred the wires, showing that there was an undue amount of electricity. If there was not an undue amount of electricity, it would not have charred them. It should have blown out the fuses long before charring the wires. That is the purpose of the transformer."

Cross-examination:

"Yes, sir, unquestionably the primary current got on to the secondary lines, and I judge that it is the effect of the breaking down of the transformer at Stop 6, and from the undue current that was in this man's house. Assuming that Molina was killed by electricity that night and assuming this condition existed that I have heard the witnesses testify, the breaking down of the transformer at No. 6 and as to the broken ground wire at Stop 3, my explanation as to how Molina was killed is as follows: There was a ground. The system is a grounded system. There is already a grounded system. It is permanently grounded, as I understand, as all systems are of this kind; they have to be. And the grounding of this wire in the transformer would consequently, entirely naturally, send out the

current on either of the other outside legs or both of them, and send out this current on a secondary wire. The middle wire has already a ground. The primary current was turned in on either of these outside wires. Yes, sir, the primary current going on to the secondary part of the transformer passed from there to the secondary lines. As to my meaning to tell you that with those conditions, that with the primary wire grounded at this transformer,
103 that current would go out on the secondary line to that house, it most certainly would, because it would complete the circuit by going out into this house. As to where I ever learned that, I know it. No, sir, an electric current doesn't follow the shortest circuit to the earth; it follows the one of least resistance to the earth and the least resistance would be through the copper wire into Molina's house, because it is a copper wire. Yes, sir, the least resistance would be into Molina's house, through Molina and down through the floor to the ground. The system should have been grounded every five hundred feet and it was not.

"With reference to your question as to that being a better conductor than over the secondary line through Molina's house, through Molina, through his feet and this plank floor and the supports of this house to the ground than through the transformer down the pole into the ground—that was already a ground. That is one polarity and one polarity will not kill a man; it would have no effect on the case at all; it was the other leg. As to my meaning to tell the jury that the line of least resistance was through the secondary lines, through the house and through Molina rather than down this pole, the other leg was through Molina's house. One leg was already grounded. In reply to your query, if this is a grounded system, where is the primary ground, there is no primary ground, because the secondary line is grounded. It should be grounded every five hundred feet. It should be grounded to cinders or water pipe, or something of that kind, every five hundred feet; that is one leg. As to the other leg being down the pole, that is the neutral. The neutral should not carry any current, and is put there for the extreme cases when the system is not balanced. If it is properly balanced, the neutral could be cut without affecting the lights. If it is not balanced, then the neutral carries the difference between the loads. As to carrying a current, if it is not balanced, it does carry a load."

104 RAMIRO INFANZON being called as a witness in behalf of the plaintiff, was duly sworn and testified as follows:

Direct examination:

"My name is Ramiro Infanzon; age, forty years; occupation, property owner and merchant, and I live at Puerta de Tierra, between Stops 7 and 8. I recollect having trouble with fire on the night of April 1st at my house, which is a tenement. I occupy one room and rent the other rooms to some other people. The electric wires in this house come from the road and go through all the house to St. Agustin Street.

"That night I heard somebody crying that there was a fire, the owner of a cafetin that is on the ground floor of that house, so I went down to the place where it was ignited, in the same house. The wires run on the outside of the house along the balcony and they are high. This fire was near St. Agustin Street. No, sir, it isn't a laundry, there is a sink upstairs; that is all."

Cross-examination:

"My tenants — do their washing in the house, but in the court yard downstairs. These wires I think in some places run along underneath the gallery and in others on the side to the different rooms. This fire started in a room on the ground floor near the floor of the gallery."

And thereupon both parties having closed their testimony, the Court charged the jury as follows:

105 *Court's Instructions to the Jury.*

Gentlemen of the Jury: This is a plain action for damages brought by the plaintiff as the widow of her late husband Francisco Molina, who she alleges met his death, on the night of the first or the morning of the second of April, 1908, through the negligence of the defendant, as set out in the complaint, and which she claims has been shown you by the evidence. The action is filed under section 1803 of the Civil Code of Porto Rico of the year 1902, which reads:

"A person who by an act or omission causes damage to another when there is fault or negligence shall be obliged to repaid the damage so done."

She claims damages in the sum of $50,000. but her counsel in his closing argument stated that she considers about the sum of $25,000 as a reasonable amount to recover on the proofs, but the fact that this amount is claimed is no reason why you should award that sum unless the proofs and the law warrant it.

The defendant filed what in effect amounts to a general denial of all the allegations of the plaintiff.

It may be well to state to you, gentlemen, at the outset, that the parties to this suit have exactly equal rights before you, which is the same thing as saying that they have equal rights before the law, and the fact that the plaintiff is now a widow and has sustained grievous loss in the death of her husband, and for such reason is entitled to the sympathy of all good citizens, is of itself no reason why she should recover any sum at all from this defendant, unless the defendant is liable in damages under the facts as proved and the law as here given you. Neither is the fact that this defendant is a corporation any reason why you as fair-minded
106 men, bound by your oaths to hold the scale of justice even between the parties, should hold the plaintiff entitled to any damages, unless you believe on the facts proved and the law here given you that the defendant is liable.

We might also state that we have noted with satisfaction that in this island there appears to be no prejudice entertained by jurors generally against corporations as such, as is often said to be the case in several sections of the different States of the Union.

Therefore, assuming your minds to be impartial and that you are possessed of a desire to do exact justice between the parties, and have the moral courage to do it, the Court delivers these, its instructions:

There is evidence in the cause, gentlemen, tending to show that on the night of April the first, 1908, or the morning of April the second, the deceased was in his diningroom at Puerta de Tierra, this city of San Juan, and shortly thereafter was found dead upon the floor thereof. There is also evidence tending to show that his death was brought about by an electric shock. There is also evidence tending to show that there were no currents of electricity anywhere in that vicinity save what were generated by the plant of the defendant. There is also evidence from which the inference might probably be drawn that the deceased received a shock of electricity which caused his death, in an attempt upon his part to adjust a bulb of an incandescent light in its socket on the wall, and which electric light was supplied by the defendant for proper compensation on a contract with the defendant.

You are instructed gentlemen, that an electric lighting company which holds itself out to the public as the supplier of electric current for lighting purposes and which contracts with indi-
107 viduals to furnish light or power over a system constructed and controlled by itself, is bound by the law to a supervision and diligence proportionate to the peculiar character and danger of the commodity in which it deals, and is bound to take such reasonable precautions as are known to science to prevent a dangerous amount of current from entering any citizen's premises, and that such a company is liable for the death of an individual, even though the causes that brought about the dangerous intensity of the electric current that resulted in the death are not clearly established, if you believe from a preponderance of the evidence that the extra electricity came over the defendant's system of wires from its supply wires on the street in front of the plaintiff's premises.

And you are further instructed that if you believe from a preponderance of the evidence that the deceased came to his death while innocently and without knowledge of any danger using an incandescent light, the current for which was furnished, or to which the electricity was supplied by the defendant company, the presumption is that the electric company was negligent and it devolves upon it to show that the surplus and dangerous current that came over the wires did not occur from any negligent act on its part.

You are further instructed, gentlemen, that the deceased had a right to presume that the defendant company would take all proper and necessary precautions not to expose him to any unusual danger or risk in or about the lighting of his house with electricity and therefore if you believe from a preponderance of the evidence that defendant did so expose him, and that he had no knowledge of the

actual danger at the time he was killed, if you believe he was killed by an electric shock in the manner indicated by the evidence, then it is your plain duty to find for the plaintiff and assess her damages at such reasonable sum within the amount claimed by her counsel in his argument as you may believe as reasonable men she is entitled to, to compensate her for her loss.

108 You are further instructed that the mere fact of the occuring of the accident and of the death of the plaintiff's husband is no reason why you should hold this defendant liable unless you believe from the showing made by the plaintiff,—because the burden is upon her to show it by a preponderance of the evidence—that the death of her husband was caused by an electric shock from electricity generated at the defendant's plant and negligently permitted to enter deceased's premises by the defendant. And therefore if you believe from a preponderance of the evidence that the deceased did not come to his death in such manner, it is your duty to find for the defendant because the plaintiff would in such case have no right to recover. If deceased by his own act contributed toward his own death and that act on his part was negligent and contributed toward the accident which caused his death, then plaintiff cannot recover, even if it has been shown that defendant was also negligent. In estimating the damages to which the plaintiff may be entitled, if you believe as here instructed that you should on the case find for her, you may take into consideration the age of the deceased, his expectancy of life and his earning capacity, of which latter you must be the judge from a preponderance of the evidence, but you are further instructed that, in this sort of a case, where no express malice has been shown, recovery of damages can be compensatory only, and therefore you cannot give any punitive damages, or, as it is sometimes called, "smart money" against the defendant, if you should find for the plaintiff.

You are instructed, gentlemen, that by a preponderance of the evidence is not necessarily meant the side that has the more witnesses, but such phrase means the side upon which the truth lies in your minds as honest, fair-minded men, after a full, fair and impartial consideration of all the facts and circumstances of the case.

109 You, gentlemen, are the sole judges of the weight of the evidence and of the credibility of the witnesses and if you believe that any witness has wilfully sworn falsely as to any material fast in the case, you may discredit the whole or any portion of such witness's testimony unless the same shall be duly corroborated by other facts or circumstances in the case.

These trials are expensive and it is therefore hoped that you will arrive at a verdict. But this statement is not intended to coerce any of you into giving up your opinion to other jurors if you believe that wrong would ensue by your so doing. It is intended only to instruct you that you should deliberate with each other and those holding one view should give reasons for so holding and listen to the reasons of those holding opposite views, so that as reasonable men, after a careful analysis of the evidence and the application

of the law to it, you may all be able to agree upon a proper and reasonable verdict.

No person is under oath here or has any responsibility for this verdict but yourselves. You are bound by your own consciences only and your sense of justice and the law as here given you. It would be an impertinence, and, in fact, a contempt of court for either of the parties to ever question you for the solemn verdict you choose to render in this cause and therefore it is hoped that your acquaintance with either of the parties or your sympathies for, or prejudice against either one will have no influence whatever in either your deliberations or your verdict.

Two forms of verdict will be given you, gentlemen, one reading: We, the jury, find for the plaintiff and assess her damages at the sum of $——; and the other reading: We, the jury, find for the defendant. When you have arrived at a verdict, you will cause the one of the above verdicts that corresponds to it to be signed by one of your number as foreman, and the whole of you will then return it into court.

110 The pleadings and exhibits together with these instructions will be given you to carry to your deliberating room. The cause is with you, gentlemen.

And the defendant having theretofore requested of the Court the following written instructions to the jury, the same were by the Court refused, to-wit:

Charges Requested by Defendant.

1. The jury are instructed that no verdict can be rendered herein against the defendant unless it has been shown by a preponderance of the evidence that it was guilty of the negligence which was the proximate cause of the death of the deceased.

The COURT: Refused.

2. Negligence on the part of the defendant cannot be presumed from the mere fact of the happening of the accident. It must be shown in addition that the defendant was negligent and that the negligence was the probable cause of deceased's death.

Subsequently given in Court's instructions.

3. An inevitable accident is one that cannot be foreseen by the exercise of reasonable foresight or avoided by the use of reasonable caution, and hence if the jury should believe that the cause of deceased's death was an inevitable accident within the meaning of the foregoing definition, then plaintiff cannot recover herein.

The COURT: Refused.

111 4. It is incumbent on the plaintiff to show negligence on the part of defendant or she cannot recover.

The COURT: Refused.

5. If the jury should believe that defendant, through its employees, inspected its lines, transformers, etc., within a reasonable time before the accident and that said lines, transformers, etc., were

then in good condition and that defendant had not, prior to the accident, any notice of the said lines, transformers, etc., being in bad condition, then the jury are instructed that plaintiff cannot recover.

The COURT: Refused.

6. If the jury should believe that the house installation belonged to the deceased and that defendant had no control over the same, and that the accident happened by reason of defects in said installation, then plaintiff cannot recover.

The COURT: Refused.

7. Unless it has been shown to the satisfaction of the jury by a preponderance of the evidence herein that deceased died from an electrical shock, then plaintiff cannot recover.

The COURT: Refused.

And thereupon, the jury still being present, the following proceedings were had, to-wit:

Mr. HORD: Before the jury retires I would like to ask to take an exception to the not giving of the charges which I have asked. I would also like to take exception to the fact that Your Honor
112 has taken from the jury the different pleas that I have filed aside from the general denial.

The COURT: What pleas?

Mr. HORD: If I may have the papers, I will show you, sir.

The COURT: The Court passed on the pleas. You may take your exception. The Court will not instruct as to the pleas.

Mr. HORD: There is more than one plea there.

The COURT: I have instructed on the case as I believe to be right and you may take your exception.

Mr. HORD: Will Your Honor allow me to take my exception before the jury goes?

The COURT: You have taken them already, have you not?

Mr. HORD: No, sir; I have not. I have still some other exceptions and I would like to take them before the jury leaves.

The COURT: I have never admitted that that is proper to hold the jury and make a speech to the stenographer.

Mr. HORD: Will Your Honor permit me to take an exception to Your Honor's ruling on that point?

The COURT: Yes, sir.

Mr. HORD (after the jury has retired): I wish to take my exceptions now, sir. With Your Honor's permission I will take the exceptions to Your Honor's not charging as to the different pleas.

The COURT: Yes, sir; seriatim, if you wish.

Mr. HORD: I shall also take an exception to Your Honor's statement to the jury that we had pleaded only the general denial.

The COURT: Yes.

113 Mr. HORD: I shall also take an exception to Your Honor's statement to the jury that a presumption of negligence was in favor of the defendant in this case from the mere fact that we supplied them with electricity.

The COURT: I don't think that is a fair statement of the charge.

Mr. HORD: My exception is that Your Honor instructed the jury that if they believed that the deceased was killed by an electric current and if they further believed that the defendant company was supplying electricity to that house, then they might presume that he was killed by the electricity of the defendant.

The COURT: That is hardly the way I charged them.

Mr. HORD: To this part (reading from copy of instructions): And you are further instructed that if you believe from a preponderance of the evidence that the deceased came to his death while innocently and without knowledge of any danger using an incandescent light, the current for which was furnished, or to which the electricity was supplied by the defendant company, the presumption is that the electric company was negligent and it devolves upon it to show that the surplus and dangerous current that came over the wires did not occur from any negligent act on its part.

The COURT: That in substance I did give and I hold that to be the law.

Mr. HORD: I wish the stenographer would note specifically that I except to Your Honor's refusal to give the instructions numbered one, two, four, five, six, seven and eight.

114 And that the same may form part of the record for the purposes of the writ of error herein, counsel for the defendant, the San Juan Light and Transit Company, has prepared this Bill of Exceptions and tenders the same to the Court and asks that the same be signed and approved by the Court and be made a part of the record herein, which is accordingly so done and ordered.

B. S. RODEY, *Judge.*

San Juan, Porto Rico, May 17th, 1909.

115 In the District Court of the United States for Porto Rico.

No. 560. Law.

BELÉN REQUENA

vs.

THE SAN JUAN LIGHT & TRANSIT CO.

I, John L. Gay, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing one hundred and fourteen type-written pages, numbered from 1 to 114, inclusive, to be a true and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said Court, and that the same constitute the return to the annexed writ of error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 14th day of June, A. D. 1909.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk District Court of the United States for Porto Rico.

116 In the District Court of the United States for Porto Rico, Sitting at San Juan.

BELÉN REQUENA, Plaintiff,

vs.

SAN JUAN LIGHT & TRANSIT CO., Defendant.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States District Court for Porto Rico before you, between the San Juan Light & Transit Company, plaintiff in error, and Belen Requena, defendant in error, a manifest error hath happened, to the great damage of the said San Juan Light & Transit Company, plaintiffs in error, as by *their* complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, within sixty days from the date hereof, in the said Supreme Court of the United States, to be then and
117 there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, the 23rd day of February, in the year of our Lord one thousand nine hundred and nine.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk of the District Court of the United States for Porto Rico.

Allowed by:

B. S. RODEY,
District Judge.

2/23/09.

Service of within writ of error and receipt of a copy thereof is hereby admitted this 23rd day of February, 1909.

WILLIS SWEET,
Attorney for Defendant in Error.

118 [Endorsed:] No. 560. Law. In the District Court of the United States for Porto Rico. Belén Requena, vs. San Juan Light & Transit Co. Writ of error. Henry F. Hord, Attorney for defendant, San Juan, Porto Rico. Filed Clerk's office, United States District Court. February 23, 1909, John L. Gay, Clerk of the Court, By A. M. Bacon, Deputy.

Endorsed on cover: File No. 21,760. Porto Rico D. C. U. S. Term No. 534. San Juan Light & Transit Company, plaintiff in error, vs. Belén Requena. Filed July 20th, 1909. File No. 21,760.

Supreme Court of the United States

OCTOBER TERM, 1915.
No. 98.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

SAN JUAN LIGHT & TRANSIT COMPANY,
Plaintiff in Error,

vs.

BELEN RESQUENA.

BRIEF FOR PLAINTIFF IN ERROR.

E. KINGSBURY CURTIS,
Attorney for Plaintiff in Error.

H. H. SCOVILLE,
H. C. LEAKE,
HUGO KOHLMANN,
Of Counsel.

The Lawyers Press, Law Printing Office, 115 Nassau St., N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1911.

No. 96.

SAN JUAN LIGHT & TRANSIT COMPANY, Plaintiff in Error, VERSUS BELEN REQUENA.	**In error to the District Court of the United States for Porto Rico.**

BRIEF OF THE PLAINTIFF IN ERROR.

This case brings up by writ of error to the United States District Court for the District of Porto Rico, a judgment for $17,500 and costs entered in said Court on February 1st, 1909, in favor of the defendant in error, who was the plaintiff in the Court below. This judgment was based upon the verdict of a jury rendered December 4th, 1908, in an action brought to recover damages for the death of the plaintiff's husband, which was claimed by the plaintiff to have been caused by negligence on the part of the defendant San Juan Light & Transit Company, the plaintiff in error in this Court.

The Pleadings.

The COMPLAINT alleged that the death of plaintiff's husband was caused by an attempt to adjust an electric lamp in his residence, and that it occurred under the following circumstances, to wit: that said light was stationary and fixed to the wall of the room in which plaintiff was sitting, and that to turn said light on or off, the person so engaged must turn the globe within which the electric wire is enclosed, and that when the deceased so attempted to adjust the light he was stricken as herein set forth; and plaintiff avers and charges the fact to be that the death of her husband in the manner and form in this complaint set forth, was wholly due to the GROSS NEGLECT, OR CARELESSNESS, OR INCOMPETENCY OF DEFENDANT OR ITS EMPLOYEES, IN THE CONSTRUCTION, CARE AND MAINTENANCE OF SAID WIRE FOR FURNISHING LIGHT; and plaintiff further says that she is informed and believes that because of said negligence and incompetency, and for no other reason, the death of her husband was brought about, and that deceased did not contribute in any manner by any fault or negligence on his part.

The ANSWER denied the allegations of the complaint and denied specifically that defendant was at any time guilty of gross neglect and carelessness or incompetency in the construction, care and maintenance of said wire or fixtures for furnishing light. And defendant denied that it was guilty of any degree of negligence, or carelessness or incompetency, or that its employees were guilty of any such. And further, that if it should be shown that the deceased was killed by said electric current, yet not it, nor any of its officers or employees was the cause of said accident, but that the direct and sole cause thereof was the gross carelessness of the deceased in so taking hold of said electric light as to receive said shock. And further, that if said electric light or the wires thereto connected within

said house of the deceased were in any manner defective yet that not it, but the deceased and the owner of said house were guilty of negligence in connection therewith; and should it be shown that said current killed the deceased, then that not it, but the carelessness and negligence of the deceased and of the owner of said house in not renewing said wires and lamps and in not having the proper installations made for lighting purposes was the direct and immediate cause of the death of the deceased.

Statement of Facts.

As all but one of the questions to be raised by plaintiff in error arose out of the charge and refusals to charge, a brief outline of the evidence is necessary.

The deceased, on the night of April 1st, 1908, was found dead on the dining room floor in the house occupied by him and his family at San Juan, Porto Rico. There was a burn on his left hand, on the interior side of his thumb and the right border of the index finger (pp. 29, 33), and some small pieces of glass, presumably pieces of a broken electric light bulb, were found in the palm of his hand (p. 23). An autopsy was had (pp. 29, 33), and the doctors performing the same testified to the conclusion on their part that the deceased had died as the result of a shock from an electrical current (pp. 30, 34). No direct evidence was given as to the manner in which the deceased came in contact with such a current.

There were five electric lights in the house in different rooms, all of which were burning on the night of the injury (p. 18). The same lights had been there since the deceased and plaintiff moved into the house in 1902, and no repairs were made

(p. 20). The testimony of plaintiff's expert as to this wiring was as follows:

> "The wiring was in very bad condition, in dangerous condition for fire or life. It is against the wood and it is dangerous from fire. The wire touches the wood which it should not do. It comes from sockets, which are not supposed to be handled by the hand; it should be controlled by switches, but it is not, and it necessitated the man getting hold of the lamp itself and the socket to hold the socket tight, in order to loosen the lamp to turn the light on or off. The wire is very old and is not properly protected in any way" (p. 37).

Defendant's manager testified that the house installation belonged to the customer, and that defendant had no right to inspect it, except at the request of the owner or tenant. That the defendant did not make the installation at the house where the injury occurred, and that their lines ceased at the outside (p. 49). The light was turned on or off by turning the glass globe, and the metal portion, being sometimes loose, had to be held in turning the light on or off (pp. 20, 22). A noise or some sort of an explosion was heard by a member of the deceased's family shortly before his body was found on the dining room floor (pp. 17, 21). An attempt to turn on the electric light in the parlor between the time of this noise and the finding of the body was unsuccessful (p. 22), and neighbors, who came in in response to plaintiff's cries for assistance, found the house in darkness (pp. 25, 26, 27). The lights burned, however, the next night (pp. 22, 28).

Evidence was admitted to show that at a place about one hundred feet from the deceased's residence, a person received an electric shock about the same time, while trying to turn off an electric light, but the remaining lights at this place continued to burn (pp. 42–43). The plaintiff's expert after testifying generally as to primary and secondary currents,

and the function of transformers and fuses, gave it as his opinion that if the deceased was killed by touching an electric light, that it was caused "by one of the transformers, or one of the units of the transformer was in some way grounded and the primary got on the secondary line in some way, but how I do not know" (p. 37). There was no evidence that the defendant knew or could have known of such condition, even assuming that it in fact existed. Defendant's expert testimony, on the other hand, tended to show that if the primary line had been turned on the secondary wires running into the house, the fuses leading into the house should have been blown (p. 46), and the current would have burned out the lamps and caused a fire (p. 48); that the installation of the house was inspected the day after the accident and the fuses found to be intact (p. 50); that a person touching the glass globe without touching the brass socket would not get a shock (p. 48).

Defendant's testimony further showed that its lines and transformers in the vicinity of plaintiff's residence were inspected the day preceding the injury, and were then found in good condition (pp. 49, 50), that the fuses in the transformer were found intact six weeks afterwards (p. 51) and that no one had been around these transformers during the interval (p. 52), and further tended to show that the accident could not have occurred in the manner assumed by plaintiff's expert (p. 57).

A question was raised on the evidence whether a short circuiting at a bakery some distance away, where some materials lying between two electric light wires caught fire, might not have affected defendant's wires and transformers or account for the accident (pp. 53, 56, 59), and there was considerable testimony as to the voltage which would be sufficient to cause death.

Upon this evidence the Court below charged (omit-

ting the introductory and concluding paragraphs) as follows (pp. 63–64):

> "There is evidence in the cause, gentlemen, tending to show that on the night of April the first, 1908, or the morning of April the second, the deceased was in his dining room at Puerta de Tierra, this city of San Juan, and shortly thereafter was found dead upon the floor thereof. There is also evidence tending to show that his death was brought about by an electric shock. There is also evidence tending to show that there were no currents of electricity anywhere in that vicinity save what were generated by the plant of the defendant. There is also evidence from which the inference might probably be drawn that the deceased received a shock of electricity which caused his death, in an attempt upon his part to adjust a bulb of an incandescent light in its socket on the wall, and which electric light was supplied by the defendant for proper compensation on a contract with the defendant.
>
> "You are instructed gentlemen, that an electric lighting company which holds itself out to the public as the supplier of electric current for lighting purposes and which contracts with individuals to furnish light or power over a system constructed and controlled by itself, is bound by the law to a supervision and diligence proportionate to the peculiar character and danger of the commodity in which it deals, and is bound to take such reasonable precautions as are known to science to prevent a dangerous amount of current from entering any citizen's premises, and that such a company is liable for the death of an individual, even though the causes that brought about the dangerous intensity of the electric current that resulted in the death are not clearly established, if you believe from a preponderance of the evidence that the extra electricity came over the defendant's system of wires from its supply wires on the street in front of the plaintiff's premises.
>
> "*And you are further instructed that if you believe from a preponderance of the evi-*

dence that the deceased came to his death while innocently and without knowledge of any danger using an incandescent light, the current for which was furnished, or to which the electricity was supplied by the defendant company, the presumption is that the electric company was negligent, and it devolves upon it to show that the surplus and dangerous current that come over the wires did not occur from any negligent act on its part.

"You are further instructed, gentlemen, that the deceased had a right to presume that the defendant company would take all proper and necessary precautions not to expose him to any unusual danger or risk in or about the lighting of his house with electricity, and therefore if you believe from a preponderance of the evidence that defendant did so expose him, and that he had no knowledge of the actual danger at the time he was killed, if you believe he was killed by an electric shock in the manner indicated by the evidence, then it is your plain duty to find for the plaintiff and assess her damages at such reasonable sum within the amount claimed by her counsel in his argument as you may believe as reasonable men she is entitled to, to compensate her for her loss.

"You are further instructed that the mere fact of the occurring of the accident and of the death of the plaintiff's husband is no reason why you should hold this defendant liable unless you believe from the showing made by the plaintiff—because the burden is upon her to show it by a preponderance of the evidence—that the death of her husband was caused by an electric shock from electricity generated at the defendant's plant and negligently permitted to enter deceased's premises by the defendant. And therefore if you believe, from a preponderance of the evidence that the deceased did not come to his death in such manner, it is your duty to find for the defendant because the plaintiff would in such case have no right to recover. If deceased by his own act contributed toward his own death, and that act on his part was negligent and contributed toward the accident which caused his death, then plaintiff cannot recover, even

> if it has been shown that defendant was also negligent. In estimating the damages to which the plaintiff may be entitled, if you believe, as here instructed, that you should on the case find for her, you may take into consideration the age of the deceased, his expectancy of life and his earning capacity, of which latter you must be the judge from a preponderance of the evidence, but you are further instructed that, in this sort of a case, where no express malice has been shown, recovery of damages can be compensatory only, and therefore you cannot give any punitive damages, or, as it is sometimes called, 'smart money' against the defendant, if you should find for the plaintiff;
>
> "You are instructed, gentlemen, that by a preponderance of the evidence, is not necessarily meant the side that has the more witnesses, but such phrase means the side upon which the truth lies in your minds as honest, fair-minded men, after a full, fair and impartial consideration of all the facts and circumstances of the case."

The questions raised by plaintiff in error (other than the question as to a motion on the pleadings discussed in Point V) arise out of its exceptions to the portion of the charge which is printed in italics above (2nd Assignment of Errors), and to the Court's refusal to grant the following charges requested by the defendant:

> (1) "If the jury should believe that the house installation belonged to the deceased, and that defendant had no control over the same, and that the accident happened by reason of defects in said installation, then plaintiff cannot recover" (8th Assignment of Errors).
>
> (2) "The jury are instructed that no verdict can be rendered herein against the defendant, unless it has been shown by a preponderance of the evidence that it was guilty of the negligence which was the proximate cause of the death of the deceased" (4th Assignment of Errors).

(3) "An inevitable accident is one that cannot be foreseen by the exercise of reasonable foresight, or avoided by the use of reasonable caution, and hence if the jury should believe that the cause of deceased's death was an inevitable accident within the meaning of the foregoing definition, then plaintiff cannot recover herein" (5th Assignment of Errors).

(4) "It is incumbent on the plaintiff to show negligence on the part of defendant, or she cannot recover" (6th Assignment of Errors).

(5) "If the jury should believe that defendant through its employees inspected its lines, transformers, etc., within a reasonable time before the accident and that said lines, transformers, etc., were then in good condition and that defendant had not, prior to the accident, any notice of the said lines, transformers, etc., being in bad condition, then the jury are instructed that plaintiff cannot recover" (7th Assignment of Errors).

ARGUMENT.

POINT I.

The doctrine of res ipsa loquitur was not applicable, and the Court below erred in applying it in the case at bar.

The second assignment of error is as follows:

> "That the Court erred in charging the jury as follows:
>
> 'You are further instructed that if you believe, from a preponderance of the evidence that the deceased came to his death while innocently and without knowledge of any danger—using an incandescent light, the current for which was furnished or to which electric-

> ity was supplied by the defendant company, the presumption is that the electric company was negligent and it devolves upon it to show that the surplus and dangerous current that came over the wires did not occur from any negligent act on its part.'"

This was an application by the Court below of the doctrine of *res ipsa loquitur* to the facts of the present case. It is submitted that upon the evidence which went to the jury, this doctrine was not applicable, and that the portion of the charge above quoted and excepted to was, therefore, erroneous.

This doctrine applies only where all the agencies which might have been instrumental in bringing about the injury are under the exclusive control and management of the defendant.

Res ipsa loquitur is not applicable, and there can be no presumption of negligence on the part of the defendant where plaintiff's evidence tends to show as it did in the case at bar:

(1) Contributory negligence on plaintiff's part; or

(2) That the accident would not have happened had the defective installation owned by the defendant or the owner of the house been in good condition, or

(3) Facts from which it could be inferred that a third agency was the proximate cause of the accident, or

(4) That it was a case of divided responsibility where an unexplained accident may have been attributable to one of several causes, for some of which the defendant is not responsible.

In *Peters* vs. *Lynchburg Light & Traction Co.*, 108 Va., 333, the plaintiff sued to recover for injuries sustained by him in turning off an incandescent light in his kitchen, claimed to have been occasioned by reason of the secondary wire in the building being allowed to carry a dangerous voltage

of electricity. The language of the Supreme Court of Appeals of Virginia, in passing on a writ of error brought by plaintiff to a judgment entered for the defendant on a demurrer to the evidence, is very pertinent in the case at bar. The Court said:

> "The defendant had neither ownership nor control of the electric appliances on the plaintiff's premises. The house was wired by the owner under the inspection of the city electrician, and the wiring and electric equipment were his property. The two experts who examined the premises to discover the cause of the accident, are agreed that excessive voltage could only have been transmitted into the building by one of two means: either by the transformer being out of order, or by crossing of the secondary wire with some other wire of higher voltage; neither of which conditions was found to exist. On the contrary, the testimony of both these experts (one introduced by the plaintiff and the other by defendant) shows that in their opinion the accident was due to the circumstance that the brass on the light bulb protruded from the socket in such a way that when the light was on, the upper end of the brass was in contact with the wires in the socket. * * *
>
> "To sustain a recovery, the plaintiff relies chiefly on the doctrine of *res ipsa loquitur;* and calls special attention to the case of *Alexander* vs. *Nanticoke Light Company*, 209 Pa., 571; 58 Atl., 1068; 67 L. R. A., 475; 17 Am. Neg. Rep., 354. There is, however, obvious dissimilarity in the facts of the two cases. In the outset, the opinion in the Pennsylvania case states: 'The premises of the appellant * * * were lighted by electricity. The electric light was furnished by the appellee, an electric light company. It had wired the store and cellar of the plaintiff, furnished the electric lamps, and made and maintained the connections. * * * He went into his cellar to show goods to a customer, and while handling in the usual way an ordinary incandescent light bulb, suspended from the ceiling by flexible extension cord, was severely shocked and seri-

ously injured. From the facts submitted, it appeared that when he was shocked the electric wires on his premises were charged with a higher voltage than they should have carried, but the cause of this was not shown to have been any specific negligence of the defendant.' The Court held, upon the foregoing premises, that the presumption was that the Company was negligent.

"The differentiating features between the Pennsylvania case and the case in judgment, are, the presence in the former case and absence in the latter, of excessive voltage on the lighting wires; and the further fact, that in the former case the light company wired the plaintiff's store and cellar, furnished the electric lamps and made and maintained the connections; while, in this case, the wiring was done, and the electric outfit was owned, installed and controlled by the proprietor of the premises. * * *

"BUT THE DOCTRINE OF *res ipsa loquitur* CAN HAVE NO APPLICATION WHERE THE ACCIDENT IS DUE TO A DEFECTIVE APPLIANCE UNDER THE MANAGEMENT OF THE PLAINTIFF; NOR TO A CASE INVOLVING DIVIDED RESPONSIBILITY, WHERE AN UNEXPLAINED ACCIDENT MAY HAVE BEEN ATTRIBUTABLE TO ONE OF SEVERAL CAUSES FOR SOME OF WHICH THE DEFENDANT IS NOT RESPONSIBLE."

Peters vs. *Lynchburg Light & Traction Co.*, 108 Va., 333.

In the case at bar, the error of the Court below in charging that there was a presumption of negligence on the part of the defendant becomes even more apparent when considered in connection with the allegations of the complaint which base the plaintiff's cause of action upon an alleged neglect in the construction, care and maintenance of the inside wiring. When the evidence showed that such inside wiring was under the control and management of the plaintiff and not of the defendant, clearly neglect on the part of the defendant as relied upon in the complaint could not be presumed upon the doctrine of *res ipsa loquitur*.

In *Minneapolis General Electric Co.* vs. *Cronon*, 166 Fed. Rep., 651, a judgment was reviewed awarding the defendant in error in that case damages for the death of her husband through contact with an electric light wire in a blacksmith shop, into which the deceased had entered for the purpose of extinguishing a fire. In that case, as in the case now at bar, the complaint charged neglect on the part of the defendant in connection with the wiring inside of the building. In reversing the judgment below the Court said:

> "So, throughout the trial, and as indicated by the charge of the Court, the company was sought to be held responsible for the condition of the wires inside of the shop, as not being in condition to receive the charge of the current at that time sent into the building. The Court refused to admit proof offered by the company that the shop was wired under an independent contract, paid for by the shop owner, and it became his property, and under the agreement was by him to be kept inspected and repaired; the assertion of the Court being that it was the responsible duty of the company furnishing the electricity to see to it that the inside wiring of the building was in safe condition for transmission into it of the electricity.
>
> "As if the issue tendered by the petition warranted it, the plaintiff below was indulged to introduce a lot of expert testimony for the purpose of showing that the charge of voltage passing over such wire was too great, and that it might be inferred that the company was guilty of some negligence in not seeing that its transmitters, at some undisclosed point on its system of wires, were out of order, without any other fact or circumstance from which such inference might be drawn, or that the cause thereof, occurring at that time of the morning, could have been known to or discovered by the defendant." * * *
>
> "The doctrine of *res ipsa loquitur*, invoked in argument, has no place under the facts of this case. At best it is uncertain, if not dangerous, in practice, and should not be applied,

> 'except when it not only supports the conclusion contended for, but also reasonably excludes all others.' * * *
>
> "Sufficient answer to its application to this case is that the place where the injury occurred was in the exclusive control of another, and the defect in the wire that occasioned the injury was not the fault of the electric company."
>
> *Minneapolis General Electric Co.* v. *Cronon*, 166 Fed. Rep., 651, at pp. 654, 659.

Clearly the responsibility of the electrical company would be no greater to the person who is himself responsible for the defective wiring inside of his own house or shop, than it is to a third party whose presence in the shop is by license from the owner and who has nothing to do with the electric equipment.

Similarly, in *Memphis Consolidated Gas & Electric Company* vs. *Speers*, 113 Tenn., 83, it was held, that defendant contracting to furnish electricity for the illumination of a sign in front of a building, but having no interest in or control over the wires or appliances by which the electricity was conducted to the same, was not liable for the killing of plaintiff's horse by electricity escaping from such wires, over a chain by which the horse was hitched to the post carrying the sign.

So also in *National Fire Insurance Company* vs. *Denver Consolidated Electric Co.*, 16 Colo. App., 86, where it was attempted to hold the defendant company responsible for fire caused by neglect in the wiring of the building by the owner, the Court said:

> "Where parties undertake to wire their own property and then apply to a light company to deliver a current to light the building, they must be assumed to take all risks resulting from the character of the wire which is put in the building, and the method of construction which is adopted in putting it in." * * *

"It is a matter of common knowledge, and in fact of universal knowledge, that an electric current is dangerous and must be discreetly and prudently handled in order to avoid danger either to life or to property. We are quite ready to concede that when an electric light company undertakes to supply a dangerous current to a dwelling house or to a building, they are bound to see that the wires they put in and the connections they make, are properly insulated and protected so that no harm will come to the property. Where, however, they are only employed to deliver the current by connection with wiring already made by the individual who owns the property, it seems to us that their responsibility ends when the connection is properly made, under proper conditions, and they deliver the current in a manner which will protect both life and property. We do not believe any such responsibility rests on the company as to require them to advise the persons who apply for the connection that they must see to it that the wiring is of a certain class or description; that it is insulated in a particular manner; and that there is no connection between it and the woodwork, and failing in this that they will be liable for any damages which may happen because of the negligence or unskillful nature of the construction. When parties wire houses, they are supposed to have done it intelligently and to have hired competent persons for the purpose, to whom alone they must look in case the work is improperly and unskillfully done."

National Fire Insurance Co. vs. *Denver Consolidated Electric Co.*, 16 Colo. App., 86.

In *Harter* vs. *Colfax Electric Light & Power Co.*, 124 Iowa, 500, a judgment had been obtained by the plaintiff for an injury sustained by him through contact with an electric wire at a hotel in Colfax known as the Mason House. Defendant showed that it did not furnish the wire or fixtures for the Mason Hotel, but that they belonged to the proprie-

tors thereof. It further showed that it maintained a transformer which reduced the current from 1,100 volts on the primary wires to 52 on the secondary wires, which ran from the transformer into the hotel; that this transformer was in good condition, and that it had no knowledge of defects of any kind in the wiring of the hotel. The Court, in reversing the judgment in favor of the plaintiff, said:

> "It is shown beyond controversy that, if such a current as the primary wires carried had been conveyed into the hotel, it would have burned out the fuse in the transformer, and extinguished all the lights in the hotel; that it would also have burned out the fuses in the rosettes, which are ordinarily attached to the ceiling, wherever a light is intended to drop therefrom. It further appears that none of the lights in the hotel were extinguished, save the one in the bathroom; that none of the fuses were burned out, and that the transformer was in good condition after the accident. * * *
>
> "It is further shown that 52 volts of electricity would not produce the injuries of which plaintiff complained, nor any serious injuries of any kind. It is also shown that there was a meter in the Mason Hotel, which would have been burned out had any such current as the plaintiff complained of passed over the secondary wires. Further, it was shown that it was impossible for a current of 1,100 volts to pass by induction through the converter so as to produce a dangerous current on the secondary wires. * * *
>
> "The maxim *res ipsa loquitur* does not apply to such a case as this, for there is no evidence that the accident was due to a dangerous current knowingly, or even negligently, sent into the hotel by the defendant company. * * *
>
> "It also erred in submitting the case to the jury on the theory that under the circumstances shown, a presumption of negligence on the part of the company arose, which it was its duty to rebut. The rule does not apply where the negligence of a third person intervenes. The evidence shows without dis-

> pute or question, that if defendant had sent into the hotel such a current of electricity as it is claimed it did, it would have burned out the fuses in the transformer, destroyed the meter, burned out all the fuses in the fixtures, and destroyed the lights. None of these things occurred, however. The only possible theory, then, on which a recovery may be had is that the wire coming in contact with plaintiff's body, he at the time standing on a wet floor, formed a short circuit, and that he was injured by reason thereof. That phase of the case was not submitted to the jury."
>
> *Harter* vs. *The Colfax Electric Light & Power Co.*, 124 Iowa, 500, 503, 505.

Moreover, the doctrine of *res ipsa loquitur* does not apply at all where the complaint relies on specific acts of negligence. In such case, plaintiff must prove the negligence alleged:

> "This is not a case, under the facts disclosed, where *res ipsa loquitur* applies * * * But even if it were a case to which, under proper pleadings, the doctrine would apply, yet in this case specific acts of negligence are charged and not general negligence. In such cases, where the plaintiff chooses in the petition to allege specific acts of negligence, the rule of law places the burden of proving such specific negligence upon the plaintiff, and a recovery, if had at all, must be upon the specific negligence pleaded."
>
> *McGrath* v. *St. Louis Transit Co.*, 197 Mo., 97.

In the case at bar, the complaint specifically charged negligence in connection with the wire inside the electric light globe which the deceased was alleged to have touched, and plaintiff, in order to recover, was obliged to prove the specific negligence alleged. The fact of the death of the deceased was no evidence at all of its having occurred by reason of negligence on defendant's part as set forth in the

complaint. The testimony tended to show that defendant could not have been guilty of the negligence alleged, as it did not have any control over the wires to which the allegations of the complaint referred.

POINT II.

The doctrine of res ipsa loquitur, even if applicable, was incorrectly applied by the Court below.

The correct application of the doctrine of *res ipsa loquitur* requires that the evidence of the happening of the accident, even without other proof of negligence, should be allowed to go the jury as evidence from which negligence may be inferred by the jury. It creates no presumption of negligence, and does not shift the burden of proof:

> "It has never been decided in this State that where the principle of *res ipsa loquitur* applied, its effect was to shift the burden of proof upon the issue of negligence. In an action for damages for death by wrongful act, the burden is on the plaintiff upon the issues of negligence and damages (the only issues in this case), and if an accident happened out of the ordinary, our court has never said that this circumstance established the plaintiff's case and shifted the burden of proof upon the issue over to the defendant.
>
> IN THOSE CASES WHERE THE DOCTRINE IS APPLIED, THIS COURT REGARDS IT AS PURELY EVIDENTIAL, AND THE INFERENCE TO BE DRAWN FROM THE FACT OF THE ACCIDENT IS SOME EVIDENCE WHICH THE COURT PERMITS TO GO TO THE JURY UPON THE QUESTION OF NEGLIGENCE, AND THE PLAINTIFF IS NOT REQUIRED TO PROVE THE ACTUAL FACTS SHOWING THE PARTICULARS WHEREIN THE DEFENDANT WAS NEGLIGENT, BUT THERE IS NO PRESUMPTION RAISED WHEREBY THE BURDEN OF PROOF IS SHIFTED.

"*Res ipsa loquitur* does not dispense with the rule that he who alleges negligence must prove it. It is simply a mode of proving negligence and does not change the burden of proof. *Labatt Master & Servant*, Section 834; *Womble* v. *Grocery Co.*, 135 N. C., 481; *Stewart* v. *Carpet Co*, 138 N. C., 67. In the latter case, Mr. Justice Walker says: 'The law attaches no special weight as proof to the fact of an accident; but holds it to be sufficient for the consideration of a jury, even in the absence of any additional evidence.' We think the jury had before them all the circumstances connected with the accident, and doubtless gave them such weight as they thought proper and they seem to have drawn from the fact of an accident no inference of negligence."

Lyles vs. *Carbonating Co.*, 140 N. C., 25 at p. 26.

"THE SUGGESTION HAS BEEN MADE IN ARGUMENT OF CASES AT THIS TERM, THAT WHEN THE RULE APPLIES IT IS THE DUTY OF THE COURT TO INSTRUCT THE JURY THAT PROOF WHICH CALLS THE RULE INTO ACTION CONSTITUTES A PRIMA FACIE CASE, OR RAISES A PRESUMPTION OF NEGLIGENCE. THIS IS A MISAPPREHENSION BOTH OF THE PRINCIPLE UPON WHICH THE RULE IS FOUNDED AND ITS APPLICATION. * * * The evidence shows that it did start suddenly, and, so far as the plaintiff is able to say, from an unknown cause. *The defendant says that it was an accident. That may be true, and in the absence of any other testimony, a jury would be justified in so finding. But, on the other hand, the jury may infer that this is not a satisfactory explanation;* that the difference between the width of the belt fork and the belt, in some way caused the machine to start; that the piece of wood put upon it to make it correspond had worn or dropped out, and that caused the movement of the belt on the pulley. We do not suggest that either of these hypotheses is true. We are not sufficiently advised to have any opinion in regard to it. We merely say that a properly adjusted belt, removed from the

tight pulley on to a loose pulley, does not usually get back on to the tight pulley and start the machine at so rapid movement as to tear a man's arm off. It is for this reason, the law says, that the plaintiff is entitled to have a jury pass upon the physical facts and condition, and to say whether in their opinion he has made good his allegation of actionable negligence. The defendant may, or may not, introduce evidence as it is advised. By failing to do so, it admits nothing, but simply takes the risk of *non-persuasion*. This is what is meant by going forward with testimony. He, by this course, says that he is willing to go to the jury upon the plaintiff's evidence."

Ross v. *Cotton Mills*, 140 N. C., 115, at p. 119, 120.

"The burden is on the plaintiff to show that defendant was negligent. How this negligence is to be proved varies. It may be possible to bring direct evidence as to the cause of the injury, and who was responsible therefor; or there may be direct evidence of some facts and circumstantial evidence as to others; or purely circumstantial evidence may by itself be sufficient to show that defendant was at fault. There is in neither of these instances, however, any presumption of law, but evidence on which the jury may reason and from which they may draw conclusions as to matters not directly proved. THIS INFERENCE IS ONE OF FACT AND NOT OF LAW. IT IS TO BE REACHED BY THE JURY AND NOT BY THE COURT."

Cherall v. *Palmer Brick Co.*, 117 Ga., 106, 108.

See also *Buckland* v. *New York, N. H. & H. R. Co.*, 181 Mass., 3.

"This indirect method of arriving at the negligence of defendant is generally expressed by the maxim *res ipsa loquitur*. Literally translated, it means, 'the thing speaks for itself,' and is merely a short way of saying that the circumstances attendant upon the

accident are themselves of such a character as to justify a jury in inferring negligence as the cause of the injury. It in no wise modifies the general doctrine that negligence will not be presumed."

De Glopper v. *Nashville Ry. & Light Co.*, 134 S. W. R., 609, 611.

"Negligence is never presumed. If it were, it would be the duty of the Court, in the absence of exculpatory evidence by the defendant, to direct a verdict for the plaintiff, whereas in these cases the question is for the jury. The accurate statement of the law is not that negligence is presumed, but that the circumstances amount to evidence from which it may be inferred by the jury."

East End Oil Co. vs. *Pennsylvania Torpedo Co.*, 190 Pa. St., 350, 353.

"The fact that the very nature of the accident may call upon him, who is charged with negligence, therefore, to explain the occurrence does not lift the burden upon the issue of negligence from him who asserts it and put it upon him who is charged therewith."

Dean vs. *Tarrytown, White Plains & M. R. R. Co.*, 113 App. Div., 437; at p. 439.

The Court below therefore misapplied the doctrine of *res ipsa loquitur*, even if it could have been considered applicable in the case at bar. It instructed the jury not only that the presumption was that the defendant company was negligent, but further, that it devolved upon the defendant to show that the "surplus and dangerous current" that came over the wires did not occur from any negligent act on the part of the defendant. The instruction, moreover, contained the unwarranted assumption that the current causing plaintiff's death was necessarily "surplus and dangerous current."

The evidence showed that if any such excessive

current had passed into the plaintiff's house, the fuses would have been blown, and the lamps burned out (pp. 46, 48). The evidence further tended to show that as a matter of fact the fuses remained intact (p. 50) and that the death of the deceased may have been the result of defects in the interior wiring, for which the defendant was not responsible. Under these circumstances it was clearly prejudicial to the defendant for the Court to ignore entirely the part which the defects in the interior wiring, the short circuit at the bakery and other matters, may have played in bringing about the death, and casting upon the defendant the burden of proving that there was no negligence on its part in connection with the assumed existence of "surplus and dangerous current."

An instruction telling the jury substantially that if they believed certain facts, then the law raises the presumption of negligence, is misleading, unless it also tells the jury that such presumption is rebuttable (*Chicago, etc., Railway Co.* vs. *Crose*, 113 Ill. App., 547; *Chicago, etc., Railway Company* vs. *Jamieson*, 112 Ill. App., 69).

The Court below erred in stating that the mere fact that deceased was killed by an electric current raised the presumption that the defendant was negligent, and failing to call the attention of the jury at the same time to the evidence tending to rebut such presumption.

In the case at bar after both sides had introduced evidence explanatory of the supposed causes of the injury, an instruction directing the jury to presume negligence from the occurrence of the injury was practically a DIRECTION OF A VERDICT in the plaintiff's favor. The rule, *res ipsa loquitur*, cannot be applied where the evidence shows the conditions under which the accident happened, and the question is raised whether, under the circumstances specified, the conduct of the defendant was negligent.

Dentz vs. *Pennsylvania R. Co.*, 75 N. J. Law, 893.

The language of the Court in the last mentioned case applies equally in the case at bar. All the circumstances proved by the plaintiff as the basis of the alleged negligence were submitted to the jury, together with the defendant's evidence showing due care on its part and proper inspection of its system. The fact that plaintiff's husband was killed by an electric shock was practically undisputed, and if this alone justified a presumption of negligence, the defense was deprived of the benefit of the consideration by the jury of the question whether it had used all required care, unless the instructions permitted the consideration by the jury of such evidence. All explanatory facts were eliminated from the consideration of the jury and the instruction was practically the direction of a verdict against the defendant. If a presumption of negligence arising from the occurrence of the injury remained after the explanation of both sides as to the manner of its happening, it was of no advantage to the defendant to have the character of its acts submitted to the jury. That they were in fact submitted does not correct the wrong, for the burden of showing negligence is on the plaintiff, and it cannot be shifted by raising a presumption in favor of the plaintiff on evidence which the Court submits to the jury for the purpose of permitting it to draw an inference antagonistic to a presumption raised on the same state of facts. THE DEFENDANT IN THIS CASE WAS PUT IN AN UNFAIR POSITION, AS IT WAS PRACTICALLY REQUIRED TO OVERCOME A PRESUMPTION WHICH THE COURT DIRECTED THE JURY HAD BEEN RAISED OUT OF THE VERY TESTIMONY SUBMITTED, AND UPON WHICH THE DEFENDANT RELIED FOR ITS EXCULPATION.

Dentz v. *Pennsylvania Railroad Co.*,
75 N. J. Law, 893, 896.

POINT III.

Plaintiff's cause of action being based upon alleged negligence of defendant in respect to the interior wiring of deceased's house, there could be no recovery in this action if such wiring was not under the defendant's control.

The eighth assignment of errors is as follows:

> " The Court erred in refusing to give to the jury the following charge requested by defendant:
>
> " ' If the jury should believe that the house installation belonged to the deceased and if the defendant had no control over the same, and that the accident happened by reason of defects in said installation, then plaintiff cannot recover.' "

Failure to give this charge requested by the defendant was obviously erroneous.

The negligence upon which the plaintiff relied as her cause of action is set out in paragraph Fifth of the complaint as follows:

> " V. The plaintiff further says that the death of her said husband was caused by an attempt to adjust the electric light in the residence of her husband and herself, and that it occurred under the following circumstances, to wit: That said light was stationary and fixed to the wall of the room in which the plaintiff was sitting, and that to turn said light on or off, the person so engaged must turn the globe within which the electric wire is inclosed, and that when the deceased attempted to so adjust his light, he was stricken as herein set forth; and the plaintiff avers and charges the fact to be that the death of her husband in the manner and form in this complaint set forth, was wholly DUE TO THE

GROSS NEGLECT, OR CARELESSNESS, OR INCOMPETENCY OF THE DEFENDANT, OR ITS EMPLOYEES, IN THE CONSTRUCTION, CARE, OR MAINTENANCE OF SAID WIRE FOR FURNISHING LIGHT; and plaintiff further says that she is informed and believes that because of said negligence or incompetency, and for no other reason, the death of her husband was brought about; and that the deceased did not contribute in any manner to said accident by any fault or negligence on his part."

It will be seen, therefore, that plaintiff's cause of action is based upon alleged negligence in connection with the construction, care or maintenance of the electric wiring *inside the deceased's premises.*

The defects in this *inside wiring* either were or were not the cause of the accident. Both contingencies should have been covered in the Court's charge. As a matter of fact, neither was so covered.

If the injury was caused by matters other than the defects in such wires the plaintiff was not entitled to recover, for the reason that the negligence upon which the complaint is based is in reference to such inside wiring, and clearly recovery could not be based upon negligent acts or omissions other than those alleged in the complaint.

McGrath v. *St. Louis Transit Co.*, 197 Mo., 97.

Batterson v. *Chicago & G. T. Ry.*, 49 Mich., 184.

T. W. & W. Ry. Co. v. *Foss*, 88 Ill., 551.

Atlantic Coast Line v. *Capple*, 110 Va., 514.

Long v. *Doxey*, 50 Ind., 385.

Murphy v. *North Jersey St. R. Co.*, 71 N. J. L., 5.

On the other hand, if the defects in the house installation did cause the death of plaintiff's husband, plaintiff is not entitled to recovery unless defendant was shown to control and to be responsible for the condition of such installation. The evidence tended

to show that the wiring inside of the house belonged to the deceased, and that the defendant had no control over it, and the Court should have instructed the jury that if they believed such to be the case the plaintiff could not recover for an injury occuring by reason of defects in such installation.

In *Murphy* v. *North Jersey Street Railway Company*, 71 N. J. Law, 5, recovery was sought for injuries received by plaintiff while attempting to board a car of defendant company. The declaration alleged that while defendant's car was standing at the station, plaintiff attempted to get upon it, and that while he was in the act of boarding it the defendant's employees negligently started the car, thereby throwing plaintiff to the ground. The plea was the general issue. The case made by defendant at the trial was that the car had already started when plaintiff attempted to board. The trial Court instructed the jury that even if they believed the accident to have occurred in the way testified to by defendant's witnesses, they would, nevertheless, have a right to find for the plaintiff, if they concluded that the defendant was guilty of negligence. This instruction was held erroneous on appeal, the Court saying:

> "In the second place, it is a cardinal rule, for the control of a trial court, that only those questions which are within the issues raised by the pleadings should be submitted to the jury, and failure to observe this rule is legal error. * * * The defendant is only required to prove that he was not guilty of the negligent act charged against him in the declaration. When he does this by showing that the accident which produced the plaintiff's injury was due to a cause entirely different from that alleged by the latter, he has relieved himself from responsibility, so far as the action then being tried is concerned. To compel him to go further and disprove responsibility for the existence of that cause, is to require him to meet an issue which the case does not present."
>
> *Murphy* v. *North Jersey St. Ry. Co.*, 71 N. J. L., 5, 7.

Similarly, in the case at bar, the defendant was only required to show that it was not guilty of negligence as charged in the complaint, viz., in reference to the inside wiring. By showing that this wiring was not under its control, the defendant met the charge of negligence made against it in the complaint. This was the only issue the defendant under the pleadings was called upon to meet. It could not be compelled to go further and disprove possible responsibility in other respects. The charge of the trial Court permitted recovery by the plaintiff for negligent acts or omissions other than those set forth in the complaint and was in this respect erroneous.

This point was squarely presented by the defendant in the Court below by its request for an instruction to the jury that the plaintiff could not recover if the house installation was not under the defend ant's control. If defendant had no control over this installation it could not have been negligent in respect thereto, and as no recovery could be had under the pleadings for any negligence of the defendant in any other respect, clearly plaintiff could not recover at all, if the house installation was not under the defendant's control. The Court should have instructed the jury to this effect, and the denial of defendant's request for the above instruction was reversible error.

POINT IV.

The trial Court should have granted defendant's requests to charge mentioned in the fourth, fifth, sixth and seventh assignments of errors.

A.

THE FOURTH AND SIXTH ASSIGNMENTS OF ERRORS.

The fourth assignment is as follows:

> "The Court erred in refusing to give to the jury the following charge requested by the defendant:
>
> "The jury are instructed that no verdict can be rendered herein against the defendant unless it has been shown by a preponderance of the evidence that it was guilty of the negligence which was the proximate cause of the death of the deceased."

The sixth assignment is as follows:

> "The Court erred in refusing to give to the jury the following charge requested by the defendant:
>
> "It is incumbent on the plaintiff to show negligence on the part of the defendant, or she cannot recover."

For the purpose of this argument these two assignments will be consolidated.

The burden of showing that negligence, or other wrong, was the proximate cause of the injury is upon the plaintiff. The plaintiff must not only prove negligence, but he must also prove that such negligence was the proximate cause of the injury.

Kelsey vs. *Jewett*, 28 Hun, 51.

And he must show this by sufficient evidence; a mere surmise or conjecture that the negligence was the proximate cause of the injury is not sufficient.

Larson vs. *St. Paul, &c., Ry. Co.*, 43 Minn., 488.

Proximate cause was a question for the jury.

Milwaukee & St. P. Ry. Co. vs. *Kellogg*, 94 U. S., 469.

St. Louis, I. M. & S. Ry. Co. vs. *Needham*, 69 Fed., 823.

The question of proximate cause should have been submitted to the jury under proper instructions from the Court.

1 Thomp. on Negligence, Sec. 161 and cases.

Pittsburg Ry. Co. vs. *Carlson*, 24 Ind. App., 559.

The proximate cause is the efficient cause and one that necessarily sets the other causes in operation. The causes that are merely incidental or instruments of a superior or controlling agency are not the proximate causes and the responsible ones.

Ætna Fire Ins. Co. vs. *Boon*, 95 U. S., 130.

The question was for the jury, but they should have been instructed as to proximate cause, and allowed to consider whether the fire causing the short circuit, or the defective installation, in the house of the deceased, which installation was not made by the defendant or owned by it, or the increased current, if any, was the proximate cause of the injury.

In a decision of the Supreme Court of Spain of the 7th of March, 1902, published in Volume 93, Jurisprudencia Civil, in a case of damages, the Court says:

> "The fault or negligence is the cause of the obligation when as between it and the damage there exists the relation of cause and effect; but if the damage produced is caused by acts or omissions of a third party, the defendant shall NOT have the obligation to repair it, although such acts or

> omissions be improvident or unlawful, and much less when it is proved that the proximate cause of the injury was the negligence of the injured man himself."

The above decision was in interpretation of Sections 1902 and 1903 of the Spanish Civil Code, which correspond to Sections 1803 and 1804 of our Code, and the Supreme Court of Porto Rico has adhered to the doctrine as above stated by the Supreme Court of Spain.

Roman vs. *American Ry. Co*, 10 P. R., 52.

> "That one cannot recover damages for an injury to the commission of which he has directly contributed, is a rule of established law and a principle of common justice."
>
> *Little* vs. *Hackett*, 116 U. S., 366, 371.

B.

THE FIFTH ASSIGNMENT OF ERRORS.

The fifth assignment of errors is as follows:

> "The Court erred in refusing to give to the jury the following charge requested by the defendant:
>
> 'An inevitable accident is one that cannot be foreseen by the exercise of reasonable foresight or avoided by the use of reasonable caution, and hence if the jury should believe that the cause of deceased's death was an inevitable accident within the meaning of the foregoing definition, then plaintiff cannot recover herein.'"

Unavoidable accident means that the accident could not have been avoided by the defendant by the use of ordinary caution and care.

> "It is one that occurs without apparent cause, or at least without fault attributable to any one."
>
> *Clyde* vs. *Richmond R. Co.*, 59 Fed., 394.

"It is a casualty which happens when all the means which common prudence suggests have been used to prevent it."

Hodgson vs. *Dexter*, 12 Fed. cases, 283.

"It may result from human agency, but is unavoidable under the circumstances."

Dryer vs. *People*, 188 Ill., 40.

The Court not only failed to give the charge requested by the defendant, but said nothing at all to the jury on the subject of unavoidable accident, which was one of the special defenses of the defendant, and which was supported by evidence. The evidence shows that on the very day of the accident the defendant inspected its wires in the district in which plaintiff's house is situated.

"When we speak of an unavoidable accident in legal phraseology we do not mean an accident which it was physically impossible in the nature of things for the defendants to have prevented; all that is meant is that it was not occasioned in any degree either remotely or directly by the want of such care or skill as the law holds every man down to exercise."

Dyget vs. *Bradley* (N. Y.), 8 Wend., 469.

The defendant exercised the degree of care in the inspection of its wires which the law requires to be exercised. It could not anticipate the fire in the bakery, nor did it know that plaintiff's installation was defective. In view of such evidence it was error on the part of the Court not to instruct the jury as to inevitable accident, and state that if they believed the accident was inevitable the plaintiff could not recover.

Texas Pac. Ry. Co. vs. *Patton*, 61 Fed., 259.

Atlantic Coast Line v. *Caple*, 110 Va., 514.

C.

THE SEVENTH ASSIGNMENT OF ERRORS.

The seventh assignment of errors is as follows:

> "The Court erred in refusing to give to the jury the following charge requested by the defendant:
>
> 'If the jury should believe that the defendant through its employees inspected its lines, transformers, etc., within a reasonable time before the accident, and that said lines, transformers, etc., were then in good condition, and that defendant had not prior to the accident any notice of the said lines, transformers, etc., being in bad condition, then the jury are instructed that the plaintiff cannot recover.'"

Although bound to exercise extraordinary care in the maintenance of its electric wires, defendant was not an insurer, especially in view of the fact that it did not own or control the installations of the plaintiff. There was sufficient evidence showing that a proper inspection was made a short time before the accident, and that the inspection disclosed no defect.

Smith vs. *East End Elec. Co.*, 198 Pa., 19.

Denver Con. El. Co. vs. *Simpson*, 31 L. R. A.. 566; also 31 L. R. A., 570.

In *Cosgrove* v. *Kennebec Light & Heat Company*, 98 Me., 473, a case where it was conceded that the high voltage of the primary current had, owing to a breakdown in the insulation in the transformer, been transmitted over the secondary wires, the Court said:

> "It satisfactorily appears from all the evidence, including the subsequent investigations, that the dangerous condition of the electric cord in the fire-room was caused by the breaking down of the insulation that separates the primary and secondary wires in

the transformer at the defendant's electric station, whereby the entire voltage of the primary wire was enabled to pass into the secondary wire which supplied the lights in the fire-room. It is not in controversy, however, that this transformer was purchased from a reputable concern, that it was of a standard pattern and approved design and that it had not previously shown any indications of breaking down. It is not seriously contended, therefore, on the part of the plaintiff that any negligence or breach of duty on the part of the defendant company is established by the mere fact of the burning out of this transformer."

Cosgrove v. *Kennebec L. &. H. Co.*, 98 Me., 473, 477.

POINT V.

The defendant's motion to strike from the complaint all allegations as to exemplary damages should have been granted.

The first assignment of errors is as follows:

1. "That the Court erred in overruling defendant's motion to strike out from the complaint (amended complaint) the following paragraph:

'* * *; and the plaintiff says in this connection that her said husband was her entire support, and that although he was interested in business enterprises aside from his services as administrator of various houses and properties, his other business enterprises were in such condition that she is unable to state the value to her of his loss in the management of the same; but she avers that she is advised and believes that $10,000 is a reasonable sum to demand as exemplary damage in a case of the character of that herein set forth.'"

The Court erred in not eliminating the allegation in the complaint as to penal or exemplary damages. Under the civil law—and this case is brought under the provisions of that system of law—only actual damages may be awarded. The right to compensation for damages caused by the acts or omissions of another is a statutory right in Porto Rico. Sections 1803 and 1804 of the Civil Code of Porto Rico are copied from Sections 1902 and 1903 of the Spanish Code.

Section 1803 of our Code reads as follows:

> "A person who by act or omission causes damage to another when there is fault or negligence shall be obliged to repair the damage so done."

Section 1804 reads as follows:

> "The obligation imposed by the preceding section is demandable, not only for personal acts and omissions, but also for those of the person for whom they should be responsible.
>
> "The father, and on his death or incapacity the mother, is liable for the damages caused by the minors who live with them.
>
> "Guardians are liable for the damages caused by minors or incapacitated persons who are under their authority and live with them.
>
> "Owners or directors of an establishment or enterprise are equally liable for the damages caused by their employees in the service of the branches in which the latter may be employed or on account of their duties.
>
> "The State is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom properly it pertained to do the act performed, in which case the provisions of the preceding section shall be applicable.
>
> "Finally, masters or directors of arts and trades are liable for the damages caused by their pupils or apprentices while they are under their custody.

> "The liability referred to in this section shall cease when the persons mentioned therein prove that they employed all the diligence of a good father of a family to avoid the damage."

Section 61 of the Code of Civil Procedure of Porto Rico reads as follows:

> "When the death of a person, not being a minor, is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death, or if such person be employed by another person who is responsible for his conduct, then also against such other person. In every action under this and the preceding section such damages may be given as under all the circumstances of the case be just."

On these three sections plaintiff's rights are based. The damages referred to are actual or compensatory damages, and nowhere in the civil law is provision made for exemplary damages.

It is true that Sections 1073 and 1074 of our Code, which are taken from Section 1106 *et seq.* of the Spanish Code, provides:

> *Section 1073.*—"Indemnity for losses and damages includes not only the amount of the loss which may have been suffered, but also that of the profit which the creditor may have failed to realize reserving the provisions contained in the following sections."
>
> *Section 1074.*—"The losses and damages for which a debtor in good faith is liable, are those foreseen, or which may have been foreseen, at the time of constituting the obligation, and which may be a necessary consequence of its non fulfillment."
>
> "In case of fraud, the debtor shall be liable for all those which clearly may originate from the non-fulfillment of the obligation."

The Civil Code was adopted in Spain in 1888. In a decision of the Supreme Court of Spain made on

the 14th of December, 1894, an action brought by a mother for the death of her son, it was held:

> "Obligations arising from acts or omissions caused by the fault or negligence of another and not punishable by the law (criminal law) are subject to the dispositions of Articles 1902 and 1903, and these provide that the compensation for the injury depends upon the contingency if the act or omission alluded to is the cause of the damage.
>
> "That the indemnity corresponding to a damage caused by an act or omission, which does not in itself constitute a crime, ought to be fixed in every suit in relation to the *actual damage* suffered by the plaintiff."

In a case decided by the Supreme Court of Spain on the 15th of January, 1902, "Jurisprudencia Civil," 93, page 70, the plaintiff in said suit being the widow of a man killed by a railroad train, it was held that the indemnity which should have been awarded to the wife for the death of her husband, caused by the negligence of the defendant company, was confined to the actual damages suffered by her, and, under Section 1106 of the Spanish Code, to the profit which might have been realized by her in the future; that is to say, to the estimated actual benefit in money which she would have derived from the labor of her husband if he had lived the ordinary time of a man's life.

In a decision of the Supreme Court of Spain of the 7th of March, 1902, and published in volume 93 "Jurisprudencia Civil," page 391, it was held that, following the law expressed in Article 1902 of the Civil Code, the fault or negligence itself is the cause of the obligation when, as between said cause and the damage suffered, there exists the relation of cause and effect.

In other jurisdictions and under other systems of law, penal damages may be awarded, but only when the evidence shows malice on the part of the defendant, or such want of care as would raise the

presumption of a "conscious indifference to the consequences."

Milwaukee, &c., R. Co. vs. *Arms*, 91 U. S., 489.

W. U. Tel. Co. vs. *Eyser*, 91 U. S., 495.

Under the Spanish system, if malice or a conscious indifference to the consequences is shown on the part of the defendant, the act constitutes a crime, and the State takes upon itself to punish that act in a criminal procedure. The injured party may intervene in the same criminal procedure to prove the actual damages suffered by him through the wrongful act of the defendant, but in no case shall he be entitled to penal damages, for the crime itself is punished under the provisions of the criminal code.

As above stated, if the act does not constitute a crime, the right of action which a person may have by reason of damages suffered by said act is based upon the provisions of the Civil Code, and the procedure in Porto Rico has been amended so that the criminal and civil actions are not joined.

In the case of

Re California Nav. & Imp. Co., 110 Federal Reporter, 670,

it was held that under the Code of Civil Procedure of California, Section 377 which corresponds to Section 61 of our Code of Civil Procedure, giving a right of action for a wrongful death to the heirs or personal representatives of the deceased to recover such damages "as under all circumstances of the case may be just," the measure of damages in such an action is the probable pecuniary loss to the plaintiff or those in whose behalf he sues. The mere fact of heirship does not give the right to damages.

In the case of *Thomson* vs. *Chicago M. & St. Paul R. R. Co., et al.*, 104 Federal Reporter, 845, the Court in construing a statute of the State of Nebraska, said that an action for wrongful death is one which can be maintained only for the pecu-

niary loss sustained by the next of kin of the deceased. The cited cases were brought by the parents of the deceased.

In Alabama the father cannot recover exemplary damages for the negligent injury of his minor son in the absence of a statute permitting it.

Bube vs. *B. R. L. & P. Co.*, 140 Ala., 276.

This may also be stated as the rule in Porto Rico, for there is no statute authorizing the recovery either by parent, widow, or any other person, of exemplary damages in a case of negligence. To this date the Supreme Court of Porto Rico has decided nothing upon this question.

POINT VI.

The judgment below should be reversed, with costs.

The large verdict in this case was obtained with practically no trial by the jury of the issue of negligence on the defendant's part. In an action based upon alleged negligence on the part of the defendant in connection with the maintenance of electric wires inside of the plaintiff's premises, plaintiff's case was completely met by proof that the wiring, the condition of which was the basis of the plaintiff's cause of action as alleged in the complaint, was owned and controlled by the deceased. The Court, however, refusing to instruct the jury that upon such finding of fact plaintiff could not recover, submitted the case to the jury under a charge which practically left no question of fact open for determination, and under it the plaintiff was allowed to recover upon a cause of action which was not alleged in the complaint and which the defendant was therefore not obliged to meet.

The charge as given was practically a direction of a verdict for the plaintiff; for, ignoring all the evi-

dence in the case showing care and diligence on the defendant's part, and showing the ownership and control by the deceased of the electric installation on the premises, the charge directed the jury to presume negligence from the occurrence of the injury, and cast upon the defendant the burden of showing that an assumed "surplus and dangerous current" which, so far as the evidence showed, may or may not have come over the wires, did not occur through any negligent act on the defendant's part.

This not only erroneously placed the burden of proof upon the defendant instead of the plaintiff upon the main issue of negligence, but deprived the defendant of the benefit of the very evidence upon which it relied to exculpate itself by directing the jury to presume negligence notwithstanding the existence of such evidence and without even informing the jury that such evidence might be considered as tending to rebut such presumption.

The charge did not contain a definition of negligence or of contributory negligence, it ignored the possibility of an accident occurring without negligence on any one's part, it contained unwarranted assumptions, and it could not have been of any practical assistance to the jury.

The defendant, it is submitted, is entitled to a new trial so that its rights and liabilities may be passed upon by a jury under instructions which do not foreclose the determination of the very questions at issue.

Repectfully submitted,

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H. H. SCOVILLE,
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Of Counsel.

[2809K]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 96.

THE SAN JUAN LIGHT & TRANSIT COMPANY,
PLAINTIFF IN ERROR,

vs.

BELÉN REQUEÑA, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

Statement.

This is a writ of error to the United States District Court of Porto Rico, sued out by the defendant in the court below. The defendant in error brought an action against the plaintiff in error charging that the death of her husband, Francisco Molina, was due to the negligence of said company, the facts and circumstances having been substantially as follows:

The defendant in error and her said husband lived at stop 3½, Puerta de Tierra, a ward of the city of San Juan, Porto Rico. The plaintiff in error was at the date hereinafter set forth operating a street-car line, the track of which passed immediately in front of the house of defendant in error, and the stop indicated that it was a point at which the

trolley received and discharged passengers. The plaintiff in error also operated an electric light plant, by which the city of San Juan and the suburbs thereof were supplied with light, and among the patrons of the company in the said ward of Puerta de Tierra was the husband of defendant in error. The street-car line of plaintiff in error was operated from the same plant that furnished light, and the wires carrying the current for lighting the city and moving the cars of the company were strung on the same poles, and the transformers along the line contained the primary, or heavily charged wire of 2200 volts, and this voltage was in the same transformer reduced to 110 volts, and so much thereof having been transferred to the secondary wire the houses along the line were thus lighted from the said transformer by the lesser charged wires. In other words, each transformer held two coils of wire: The primary, charged with sufficient power to operate the trolley cars of the company, 2200 volts, and another coil, carrying the reduced voltage, with which the buildings were lighted, carrying 110 volts. On the night of April 1, 1908, the house wire in question became charged with the voltage from the primary wire, that is to say, the wire intended to carry but 110 volts, became charged with the heavy voltage intended for the running of the street cars. This was the result of a defective appliance of the defendant outside of the residence of decedent, or neglect in caring for and inspecting the same.

On the night in question, Francisco Molina undertook to turn on or off the light in his said residence, and because of the conditions stated, received a shock that caused his death. These conditions were as follows: The plaintiff in error had established what is termed the grounded system in guarding against accidents, in the event the current should escape its established confines. The current should, under this system, be carried into the ground from a point outside of the residence and no harm result, no matter what voltage might go astray. To this end, fuses are established

in each transformer, and if the wires should become overheated these fuses are expected to blow out, releasing the current, and then it passes into the ground. For some reason, not satisfactorily explained at the trial, the fuses did not blow out on the night in question, and the house wires afforded a natural and convenient avenue for the current to travel along the line of least resistance, namely, copper wire. Thus the house wires became charged with the trolley current, and so when Molina attempted to turn off his light, which was a bulb fastened to a socket in the wall, and which was itself turned, he received the shock as later herein appears. The night was very wet, a heavy rain having fallen, and all conditions were favorable to conducting the current along the lines which it would naturally follow. The moment Molina touched the bulb, or attachment thereto, he received the current, the circuit was completed. The heavy voltage broke the glass the instant it was touched by the damp hand of Molina, and he received the full 2200 volts, less whatever of this voltage had been reduced by the resistance it had encountered in reaching Molina's hand. The remainder, sufficient to kill, passed into and through his body. He was dead when found a few moments after the accident. The transformer was disconnected by the plaintiff in error early the next morning. It was found that the wires were charred, and it otherwise appeared that the primary current had been inducted from the primary to the secondary wire, because of which the powerful current was sent into the houses receiving light, and because of which the husband of defendant in error lost his life. The defendant in error charged the plaintiff in error with negligence, and the cause was tried in the lower court. The cause was tried before a jury, and a verdict was rendered and judgment entered in favor of defendant in error in the sum of $17,500.00.

Facts More in Detail.

On the night of April 1, 1908, Francisco Molina, husband of the defendant in error, was at his home in Puerta de Tierra, a ward of the city of San Juan, Porto Rico, with his wife and her sister. The wife and sister retired about ten o'clock, leaving Mr. Molina in the sala reading a book (R., pp. 17 and 18, folios 29-31). He stated that he intended to finish the book before retiring (R., p. 18, folios 31-39). His wife states that upon retiring she had left a basin of water and a towel in the dining-room for him to bathe his feet (R., pp. 17, 18). The last the wife and sister saw of Molina alive, he was reading the book mentioned (R., pp. 18, 21, 22). The next known fact was an explosion from the rear of the house that awoke one of the sisters. The sister called defendant in error, and at the same time they heard a fire alarm. An attempt was made to turn on the electric light, the house being in darkness (R., p. 21, folio 36). The sisters, frightened because of the noise in the rear of the house, and their inability to turn on the light, stepped upon the balcony, whence they saw their neighbors coming from the fire, and supposing Mr. Molina was there, enquired if he had been seen (R., pp. 17, 18). Receiving negative replies, the defendant in error asked Mr. Colombani, a neighbor of the Molinas, to go with the sisters to the rear of the house and ascertain the cause of the noise that awakened Virginia Requeña. This Colombani did, lighting matches as they passed through the hall to afford light (R., pp. 18, 21, folios 30-36). In the dining-room the body of Molina was found lying on the floor, the electric lamp, or bulb, broken, and the pieces thereof scattered about the floor, or found in the hand of Molina (R., pp. 23-25, folio 39). The plaintiff in error had adopted and completed what is termed the grounded system, that is to say, if by chance or accident, control of the current should be lost it ought to be carried to the ground, and if the plan is successfully executed no

injury to patrons of the company can result from the accident (R., pp. 50, 51, 54, folio 92, pp. 60, 61). But this action by the current is based upon the presumption that certain fuses will blow out and release it, in the event the wires shall become overcharged, or overheated, thus affording an escape through which the current will pass harmless to the ground (R., pp. 60, 58, 54, 50 46, 57; "There was not proper fuse connection," etc.). And it would so pass naturally, because it would be the path of least resistance.

The reason why the current did not thus escape on the night in question, but, instead, passed to the secondary or house wire, was as follows: There were two coils of wire in each transformer, to wit: The coil receiving the primary current, and the coil receiving the secondary current. The fine, heavy coil receives the primary current, and, by a process known to electrical engineers, a portion of the current is deducted from the primary to the secondary wire, the strength of the current received by the secondary wire being governed by the size of the wires. Oil is used in the transformers through which the current passes, and as it is a non-conductor, or a powerful resistant, the current, because of the oil, and the character of the wires used, is entirely under the control of the engineers (R., pp. 45, 46). Now, if the transformer is neglected, and the oil becomes mixed with water, or other conductor, or if it is permitted to dry up, the result is that the secondary wire will become charged with the primary current and if the safety fuses are not blown, thus releasing the current and carrying it to the ground, the current will find its natural escape through the secondary or house wire (R., pp. 60, 61). This is precisely what happened in the case at bar. The fuses were not blown (R. p. 51, folio 87). The fuses are inserted for the purpose of releasing the current in the event of accident (R., p. 46, folio 79). In this case the subsequent examination of the transformer showed that the wires were charred with heat, thus demonstrating that the current sought release as indicated, and it found its natural avenue of escape

through the secondary wire. The fuses had not been properly inserted, as they did not blow, notwithstanding the great heat that must have been present; a heat sufficient to char the wires (R., p. 60, folio 102); and so great that it was found to be still warm when the inspection was made the morning after the accident, causing the inspector to disconnect it at once (R., 52).

The fuses of plaintiff in error placed for the protection of the house consumers were not in order, or had not been properly placed (R., p. 37, folio 64). As a result, the heavy voltage of the primary wire entered the house, and Molina's life was one of the penalties. The manager of the plaintiff in error and kindred companies, a conceded expert in such matters, stated that if Molina received the voltage of what remained of the 2200 volts after the resistance it had met, even though it had been reduced to 500 volts, but received it standing barefooted on a damp floor, the shock would cause death (R., pp. 49, 50). The deceased was standing on a damp floor, barefooted, and received the shock (R., pp. 19, 23, 26, folios 31, 37, 41). Unquestionably, Molina died on the night of April 1, 1908, from an electric shock in an effort to turn on or off the light in his house (R., pp. 28 to 35, inclusive, evidence of physicians). The current was furnished by the plaintiff in error (R., pp. 49, 50, folio 84).

Pleadings.

The pleadings in this cause, governed by Title VII of the Code of Civil Procedure of 1904, are not fully set forth in the record, that is to say, the original complaint, at least, is absent. The amended complaint (R., pp. 1-3), as filed December 4, 1908, would seem to be the original complaint rewritten as a means whereby to eliminate paragraphs 3, 4, and 5, as a result of the order of court (R., pp. 4-5) on demurrer, entered November 6, 1908, which also allowed the defendant until November 9 to answer.

The answer (R., pp. 6-7) was filed November 7, 1908, before the rewritten or amended declaration was submitted, and refers to the original numbers of the paragraphs, exclusive of paragraphs 3, 4, and 5, which had theretofore been stricken out on demurrer.

Said amended complaint recites that the plaintiff is the widow of one Molina and a citizen of San Juan, Porto Rico, and that the defendant is a corporation organized under the laws of New York, and avers that (1) on April 1, 1908, she resided with her husband at stop 3½ in Puerta de Tierra, a ward of San Juan, in a house belonging to Succession Dorado; (2) that in the night of April 1, 1908, her said husband

> "was sitting in his home, between the hours of eleven and twelve o'clock, engaged in reading by the electric light in the room, and which was made stationary to the wall thereof, and the said light becoming extinct, or oscillating, the said Molina arose and attempted to adjust the same, with the result that he received from the wire conducting the electric current for said light such a shock as to cause his instant death";

(3) That he was thirty-eight years of age, industrious, with good habits, good character, good business capacity, and a good husband; (4) that

> "at the time of his death, and for a long period of time prior thereto, he had been earning $150.00 per month, as administrator or agent of various properties, and as commissioned salesman, and besides he had for a long period of time been a partner in the firm of Molina and Colombani, engaged in the manufacturing of liquors";

(5) "the plaintiff further says that the death of her said husband was caused by an attempt to adjust the electric light in the residence of her husband and herself, and that it occurred under the following circumstances, to wit: That said light was stationary

and fixed to the wall of the room in which the plaintiff was sitting, and that to turn said light on or off, the person so engaged must turn the globe within which the electric wire is enclosed, and that when the deceased attempted to so adjust his light, he was stricken as herein set forth; and the plaintiff avers and charges the fact to be that the death of her husband in the manner and form in this complaint set forth, was wholly due to the gross neglect, or carelessness, or incompetency of the defendant, or its employees, in the construction, care, or maintenance of said *wire for furnishing light;* and the plaintiff further says that she is informed and believes that because of said negligence or incompetency, and for no other reason, the death of her husband was brought about; and that the deceased did not contribute in any manner to said action by any fault or negligence on his part"; (6) "that the deceased had a reasonable expectancy of life of 22 years, and that his earning capacity having been in the past $150.00 a month, with a promise of an increase in the future, she is damaged in the sum of $40,000.00, the actual loss of the plaintiff caused by the death of her said husband; *and the plaintiff says in this connection that her said husband was her entire support, and that although he was interested in business enterprises aside from his service as administrator of various houses and properties, his other business enterprises were in such condition as she is unable to state the value to her of his loss in the management of the same but she avers that she is advised and believes that $10,000.00 is a reasonable sum to demand as exemplary damages in a case of the character of that herein set forth";*

(7) That she was married to decedent June 26, 1902, and that there are no living children.

The amended complaint, as verified by the plaintiff, concludes with a demand for $50,000.00.

The aforesaid demurrer (R., 3), filed May 25, 1908, was based on the ground:

> "That the facts therein stated do not constitute a cause of action herein against it."

This demurrer was overruled, except as to paragraphs 3, 4 and 5 of the original complaint, as above stated, and no exception was reserved by plaintiff in error and no assignment is specified, based upon any error of the court in sustaining the sufficiency of the complaint.

The answer of plaintiff in error, on information and belief, denies the averments of the first, second, sixth, seventh, ninth and tenth paragraphs of the original complaint (presumably first, second, third, fourth, sixth and seventh paragraphs, respectively, of the amended complaint).

The fifth paragraph of the answer reads as follows:

> "As to the allegations contained in paragraph 8 of said complaint (presumably paragraph 5 of said amended complaint) the defendant answering upon information and belief, as to the cause of the death of the deceased says that said allegations are not true, and the defendant denies specifically that it was at any time guilty of gross neglect or carelessness or incompetency, or that its employees, or any of them, was guilty of gross neglect or carelessness or incompetency in the construction, care, or maintenance of said wire or fixtures for furnishing light. *And defendant further denies that it was guilty of any degree of negligence or carelessness or incompetency in the premises, or that its employees were guilty of any such.*
>
> "And upon information and belief, defendant *denies that the deceased was killed by said electric current.*"

On the same day, and apparently appended to the aforesaid answer, the plaintiff in error filed an unverified supplemental answer or plea (R., 7), the body of which reads as follows:

> "And now again comes the defendant by its attorney of record, and repeating its allegations that the deceased was not killed by *said electric current,* yet says, in the alternative that should it hereafter be shown that said deceased was killed by *said current*

yet that the same was an unavoidable accident to which the defendant in no manner contributed.

"And the defendant further says that if it should be shown that the deceased was killed by said electric current yet that not it, nor any of its officers or employees, was the cause of said accident, but that the *direct and sole cause thereof was the gross carelessness of the deceased in so taking hold of said electric light as to receive such shock.*

"The defendant further says that if said electric light or the wires thereto connected within said house of the deceased were in any manner defective yet that not it, but the deceased and the owner of said house were guilty of negligence in connection therewith and should it be shown that said current killed the deceased then not it, but the carelessness and negligence of the deceased and of the owner of said house in not renewing said wires and lamps and in not having the proper installation made for lighting purposes, was the direct and the immediate cause of the death of the deceased."

Trial.

In the trial of the case no effort was made to limit the introduction of proof to any defect in the wiring or fixtures within the residence of decedent, nor is there any assignment of error based upon any objection raised by the plaintiff in error in the court below to the effect that the issues should be confined to any defect in such fixtures or wiring. On the contrary, the whole theory of the defendant in error, in the trial of the case below, was that the decedent met his death by the negligence of the plaintiff in error in permitting an excessive voltage of electricity to come into the residence of decedent on the occasion of his death.

Neither did the plaintiff in error introduce evidence in support of its affirmative defense, "that the direct and sole cause thereof was the gross carelessness of the deceased in so taking hold of said electric light as to receive such shock," namely, to the effect that the ordinary electric light voltage

of 110 was sufficient to cause the death of the decedent, without being supplemented by additional voltage than that proper to be supplied in a residence. On the contrary, the testimony of witnesses for plaintiff in error was to the effect that the ordinary residence electric light current of 110 volts was vastly insufficient to have caused the injury to and death of decedent.

The first witness for the defense, Mr. Teale, expert and employee of plaintiff in error, testified (R., 47):

> "I have repeatedly received 500 and 600 volts and burned my hands. I was at one time laid up for thirty days and had both my hands burned clear to the bone. * * *
>
> "The floor in the dining room of house of plaintiff was a plank floor supported by wooden beams from the under-side. If a man stood on that floor and reached up with one hand to a stationary socket which was above him, with 110 volts on that wire, he wouldn't get any shock, and under ordinary conditions, he wouldn't get one under a heavier current (R., 49).
>
> "I say that a man in normal condition, the amount of current which could pass through his body standing on the floor as he was, the current would not only have to pass through his body, but through the floor and through the foundation and the amount of resistance which that current (2,200 volts) would have to go through in order to complete the circuit would be so great that the effect would be, he would never receive more than 500 volts—in other words, a man in normal condition would not have been killed. If this man had been standing on that floor barefooted just after washing his feet, so that his feet were damp, if the floor were damp and the primary current (2,200 volts) were turned on in that house in the same way, that would undoubtedly have killed him, but he would not then have received the full amount, because there would be the resistance of the wood."

Mr. Thorpe, expert for defendant, testified (R., 57):

> "Yes sir, I have heard the testimony as to the physical condition of Molina; that he was a man in good normal condition and heart good and would say that 110 volts would not ordinarily kill a man in those conditions. * * *
>
> "In answer to your question, if that man were killed by electricity, how do I explain it, if, under ordinary conditions, 110 volts would not kill him; what supposition? The only thing we can suppose is that there was no ground wire on either of the transformers. If the ground wire protection was there, it would not have happened."

THE PLAINTIFF IN ERROR WAS NEGLIGENT:

(*a*) The transformer was not properly fused—

"There was not proper fuse protection to protect the secondary line, and consequently the voltage remained on this line (the secondary), not blowing the fuse" (R., p. 37, f. 64).

"I examined the transformer about six weeks afterwards and found the fuses still intact" (R., pp. 51-52, folios 87-88; McKenzie, witness for plaintiff in error).

(*b*) The inspection of the line was imperfect, and the transformers were not, apparently, inspected at all (R., p. 52, folio 87, *supra,* McKenzie).

> "Yes, sir; I reported to Mr. Teale on the 31st that I found the line in perfect condition" (R., p. 52, folio 89, McKenzie).
>
> "Yes, sir; Mr. McKenzie reported to me the evening before the accident that they (plaintiff in error's) lines and transformers were in good condition" (R., p. 49, Mr. Teale, managing director and electrical expert).
>
> "*My inspection consisted in seeing that the poles and the overhead trolley lines are in good condition.* I just walked along and examined each pole but did not climb the poles and didn't look at the fuse. * * * No sir, on that day (March 31st) I didn't

look at the transformer any closer than I could see it from the ground.

"*There is no way you can tell from looking at the outside of the transformer whether it is in good condition or not.* * * * On the morning of April 2, after the accident, one of the transformers at stop 3 was found in good condition and the other we left on the pole, and disconnected *because the foreman felt the outside of the transformer and noted that it was warm.* * * * So we pulled Puerta de Terra switch out for the night. This was after the accident, that same night, about half-past twelve. Yes sir, *I do recollect that there was something wrong with the transformer at stop 6 that same night* and I did not examine it for some six weeks after this accident. When I did so, *I found that the insulator had become charred*, not burned, but charred. I could not say as to whether that resulted in the primary current passing to the secondary current. * * * In order to test a transformer, it would have to be taken down and sent to the shop for calibration. * * * That would be the proper means of doing it. * * *

"Yes sir, there were two of these transformers and one of them was where this *ground wire was broken*, at stop 3. The other one was at stop 6. It was the transformer at stop 6 that I cut out the next day" (Testimony of McKenzie, witness for plaintiff in error, R., pp. 50-53).

"An inspection of transformers is made every six months, and that is what we carry on here" (Thorpe, R., p. 58, folio 98).

Yet no such inspection was shown, even after the burden was placed on plaintiff in error to make complete showing.

(*c*) The grounding of the wires was imperfect, in that the groundings were too far apart (R., p. 61).

Case Made Out.

The death of decedent as the result of an excessive flow of electricity into his residence on the night of April 1, 1908, was conclusively shown. Upon the conclusion of the

introduction of the evidence on behalf of defendant in error, counsel for the plaintiff in error demurred to the evidence; but no assignment of error is made by the plaintiff in error on the action of the court in overruling this demurrer, the defendant in error having clearly made out her case.

Assignments of Error.

The assignments of error (R., pp. 12-13), as submitted in the court below, were eleven in number, numbered one to eleven inclusive.

In their brief before this court, counsel for plaintiff in error apparently abandoned assignments numbered three, nine, ten, and eleven. Their assignment number one was based upon the action of the court (R., p. 5) in refusing to grant motion to strike that part of paragraph six of the complaint which is italicised in this statement; but the journal entry fails to show that any exception was taken by the plaintiff in error to the action of the court in this regard.

The assignments of error relied on by plaintiff in error, therefore, would seem to consist of an exception to one paragraph of the charge of the court to the jury, assignment number two, and to the refusal of the court to allow certain instructions, proposed by counsel for plaintiff in error, constituting assignments four to eight, both inclusive.

ARGUMENT.

I.

Construction of Pleadings.

As the brief of opposing counsel is prepared upon the theory that the defendant in error based his cause of action upon an alleged neglect in the construction, care, and maintenance of the *inside wiring* of the residence of the deceased, it is deemed appropriate, in the outset of the argument, to controvert this contention, first urged on behalf of plaintiff in error in this appellate court.

This is based upon a strained construction of the italicised word in the expression "*said* wire for furnishing light," in the fifth paragraph of the rewritten or amended complaint which word was doubtless first used in the original complaint in the light of a more perfect description of the current supply contained in the three preceding paragraphs of the complaint, which were stricken out on demurrer. The contention urged for the first time in this appellate court is that the word "said" relates to the electric wire in the bulb which exploded in the hand of the decedent.

As has been seen above, the sufficiency of the complaint, as amended, was passed on by the court below, when it overruled the demurrer on behalf of plaintiff in error, from which action on the part of the court below there is no assignment of error.

It has been further shown, both by paragraph five of the answer and the first paragraph of the supplemental answer, that the plaintiff in error, by pleadings in this cause, recognized the fact that the averment of the complaint included, or was intended to include, negligence on the part of the plaintiff in error in the supply by it of "electric current"; *so that no surprise can be claimed on behalf of plaintiff in error by reason of a construction*, applied in the court below,

being applied in this appellate court. Indeed, plaintiff in error should not be permitted to first assert in this appellate court a theory of the issues accepted by both parties to the proceedings in the court below, independently of the statutory provisions applicable to the construction of said pleadings; but the statutes of Porto Rico leave no room for doubt on this subject.

The Code of Civil Procedure of 1904 for Porto Rico, under the head of "General Rules of Pleading," reads in part as follows:

> "SEC. 122. In the construction of a pleading, for the purpose of determining its effect, its allegations must be *liberally construed*, with a view to substantial justice between the parties.
>
> * * * * * * *
>
> "SEC. 132. Every material allegation of the complaint, not controverted by the answer, must, for the purpose of the action, be taken as proof; the statement of any new matter in the answer, in avoidance or constituting a defense or counter-claim, must, on the trial, be deemed controverted by the opposite party."

By chapter VIII of said Code of Civil Procedure, under the head of "Variance, Mistakes and Amendments," it is provided:

> "SEC. 136. No variance between the allegation in a pleading and the proof is to be deemed material, *unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits.* Whenever it appears that the party has been so misled, the court may order the pleading to be amended, upon such terms as may be just.
>
> "SEC. 137. Whenever the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without cost.
>
> "SEC. 138. Where, however, the allegation of the

claim or defense, to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance, within the last two sections, but a failure of proof.

* * * * * * *

"SEC. 142. The court must, in every state of an action, *disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affirmed by reason of such error or defect,*" (Italics supplied.)

In the light of the aforegoing, it is clear that the scope of the action cannot be so limited as to exclude the issue as to whether or not the plaintiff in error was guilty of negligence in allowing an excessive voltage of electricity to pass into the residence of decedent, causing his death.

We will proceed, therefore, to the discussion of the assignments of error relied on by the plaintiff in error, unembarrassed by any effort on the part of the plaintiff in error, in this court, to unduly limit the scope of the action.

II.

Second Assignment of Error.

The pleadings, as interpreted by both parties in the court below, presented the issue that the death of decedent was caused by the negligence of the defendant in error in permitting an excessive and dangerous volume of current to pass from the current supply of the plaintiff in error on to the residence wire of and without notice to the decedent.

At the conclusion of the trial, and agreeably to the practice approved by this court in Indianapolis and St. Louis Railroad Company *vs.* Horst, 93 U. S., 291, 295, as well as other cases, the trial court elected to charge the jury in "its own language, and present the case in its own way."

The only part of the charge to which exception was taken on which an assignment of error is based is the paragraph which reads as follows:

> "And you are further instructed that if you believe from a preponderance of the evidence that the deceased came to his death while innocently and without knowledge of any danger using an incandescent light, the current for which was furnished, or to which the electricity was supplied by the defendant company, the presumption is that the electric company was negligent and it devolves upon it to show that the *surplus and dangerous current* that came over the wires did not occur from any neglect on its part."

This part of the charge, read in connection with the balance of the charge, and to which no exception was taken, we submit correctly states the law applicable to the case and took no pertinent or disputed fact from the consideration of the jury.

By those portions of the charge to which no exception was taken, there was left to the jury, among other things, to find from a preponderance of the evidence:

(*a*) "That the *extra electricity* came over the defendant's system of wires from its supply wires on the street in front of plaintiff's premises."

(*b*) "That the death of the husband was caused by an electric shock from electricity generated at the defendant's plant *and negligently permitted to enter deceased's premises by the defendant*"—"the burden is (being) upon her (the plaintiff) to show it by a preponderance of the evidence," and

(*c*) That the decedent did not by his own act contribute toward his own death.

We submit that there was no error committed in the part of the charge contained in the second assignment of error.

Negligence, as charged against the plaintiff in error, is

general, and no effort was made in the pleadings to aver, in detail, how the excessive volume of current managed to get on the residence wire of the decedent, except that it was through the negligence of the plaintiff in error, and this question of negligence was the main issue in the case.

> "While plaintiff bears the burden of convincing the jury of the existence of the facts on which he bases his right to relief, yet the circumstances of the accident are often such as to create a presumption of negligence and afford an application for the maxim *res ipsa loquitur*. The facts that a defendant conducts electricity to a certain place; that electricity so employed may escape in such a way as to produce an injury, and that an injury from electricity is actually occasioned in a place where the injured party has a right to be, are usually held to constitute a *prima facie* case of negligence and shift upon the defendant the burden of showing that he was not negligent." Cyc., vol. 15, 447-448.

A child was injured by electricity from a telephone wire in the street. In an action of negligence against the trolley company and the telephone company, whose wires were found crossed, the Court of Appeals of Maryland said:

> "It was their (defendants') plain duty, not only to properly erect their plants, but to maintain them in such condition as not to endanger the public. It follows from this, that if the property of the defendants was not in proper condition and by reason thereof **Nelson was injured, these facts alone, in the absence** of other evidence to show that the defect originated without the fault of the companies, afford a ***prima facie* presumption of negligence."**
>
> Nelson's case, 82 Md., 293, 311.

> **"When appellant wired the basement or cellar of** appellee's house, and agreed to furnish him light for hire, it well knew it was dealing in an element that, *delivered in a current of high voltage*, such as was carried on its primary wires, was almost cer-

tain to bring death to the person who turned on the lamp, if there was a ground of the current on the circuit; hence, the law imposes upon it the duty to exercise a high degree of care and skill in the delivery of the element it had contracted for.

"If the injury itself furnishes a presumption of negligence so as to require the defendant to show, by evidence, that it has been guilty of no negligence that caused it, then it logically follows that all that is necessary to be averred in the declaration to entitle the plaintiff to recover for the injury is the agreement, a negligent breach of it, and the result; also that the plaintiff has not by any neglect on his part contributed to the result. * * *

"But it is not necessary to invoke the aid of the rule of *res ipsa loquitur* to sustain the sufficiency of the declaration in this case. * * * An allegation specifying the act constituting the injury and alleging that it was negligently or carelessly done, is sufficient." * * *

"The evidence is not contradicted. It is true no witness testified to having seen the wires in contact, but the circumstances were such that unless the deceased was killed by a static discharge of lightning striking the secondary wire, her death could be accounted for in no other way than by the coming together of the two wires, and if they were not insulated the result must have been that the current from the primary wire passed over the secondary wire attached to which was the lamp which the deceased had hold of, and if the current from the primary wire was grounded at the trees, it passed through her body, causing her death. *Absolute certainty is neither required nor expected, before a fact can be said to be proven in a civil case.* But when a result is seen and facts are proven that make the result highly probable therefrom, and the result can be explained in no other way, the probability of the existence of the facts from which only the result could flow must be deemed to be proven."

Alton Ry. & Illuminating Co. *vs.* Foulds, 81 Ill., 322, 331, 333-334; also

Alexander *vs.* Nanticoke L. Co., 209 Pa., 571; 67 L. R. A., 475.

In the Foulds case the decedent was found dead in the cellar to her residence, holding to the metal socket of a suspended electric-light bulb. Here the defendant installed the house wiring, the ordinary current on which was insufficient to kill, and the basis for the charge of negligence was an increased volume of current from the primary wire.

In the case at bar the plaintiff in error had likewise contracted to supply current from a secondary wire, and, having inspected the house wiring, defendant was as familiar with the danger to the decedent from primary current as if the house wiring had been installed by it. It is admitted by witnesses for plaintiff in error that the secondary current was *insufficient* to cause the injury, and the negligence claimed is the introduction of the primary current.

It being practically admitted that the damage could only result from the introduction, from the supply wires of the plaintiff in error, of an excessive flow of current, there is no principle which can inhibit the application of the doctrine of *res ipsa loquitur.*

> "The rule known as *res ipsa loquitur* may be thus stated: When a thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendants, that the accident arose from want of care."
> Cooley on Torts, 3rd ed., vol. 2, 1424.

Applying this definition to the case at bar, the thing which caused injury is the primary current, and this thing, together with all appliances for transforming and transmitting the reduced and safe current into residences, was under the sole management and control of the plaintiff in error.

In the case of The Denver Consolidated Electric Company *vs.* Lawrence, 31 Colorado, 301, there was involved an injury to the son of a customer of the defendant, whose

wiring was supplied by, and was under the control of, the customer. The declaration merely describes the circumstances of the injury sustained in attempting to turn on a light, and charges, in general terms as in the case at bar, negligence of the company which supplied the current. In sustaining the sufficiency of the declaration the Supreme Court of Colorado said:

> "The plaintiff, while attempting to do that which every patron of the company must do to make use of the electric light, received into his body a current of electricity, burning his hands and feet and permanently injuring him. Such injuries are not, under ordinary circumstances, received by persons who turn on an incandescent lamp if the company supplying the current has not been negligent. The defendant when it contracted with the father of the plaintiff to sell electricity for light, contracted to keep its plant and appliances in such condition that no greater volume of electricity would be carried into the house than was necessary for its proper lighting. The quantity of electricity required for lighting purposes in residences is not sufficient, if it pass through the body, to cause the injuries described by the plaintiff in his complaint. It follows, therefore, that the plaintiff must have received a very much greater quantity of electricity than the company contracted to supply. The court, therefore, did not err in overruling the demurrer to the complaint."

Referring to an instruction granted by the court, at the instance of the plaintiff, the court said:

> "In instruction numbered 4, the jury was told that in cases where the business and appliances are shown to be under the exclusive control of the defendant, and the accident is such as would not, in the ordinary course of things, occur if the defendant were exercising proper care, or where it is shown that the real cause of the accident may be the negligence of the defendant and that the defendant knew whether it was negligent or not, it is not encumbent upon the plaintiff to point out to the jury the particular act

or omission constituting the negligence." * * *

"The instructions given * * * at the request of the plaintiff *state the law applicable to cases like this.* The defendant so conducted its business that a member of the household of one of its patrons received a shock of electricity while engaged in turning on the light. It was shown by the testimony that the volume of the current received was many times that furnished for lighting purposes. The injured person, it was shown, had no means of knowing what, if any, defects existed in the plant or appliances of the defendant. *Moreover, the transformer from which the current for use in the residence was supplied was taken away by the company immediately after it was informed of the accident.* Under such circumstances it was not improper to charge the jury that the plaintiff was not required to point out the specific act or omission which caused the accident."

* * * * * * *

"We are of opinion that the evidence supported the verdict and that there were facts testified to from which the jury was warranted in finding that the defendant was guilty of negligence, or, at least, that it failed to overcome the *prima facie* case made by the plaintiff."

There are other personal injury cases based upon alleged negligent use of electrical appliances, to which the attention of the court is called as bearing upon phases of the case at bar.

Clements *vs.* La. Electric Light Co., 44 La. Ann., 692; 16 L. R. A., 43.

Girandi *vs.* Elec. Imp. Co., 107 Cal., 120; 28 L. R. A., 596.

Perham *vs.* Portland Gen. Elec. Co., 33 Ore., 451; 40 L. R. A., 799.

Suburban Elec. Lt. Co. *vs.* Nugent, 58 N. J. Law, 658; 32 L. R. A., 700.

Harrison *vs.* K. C. Elec. Lt. Co., 195 Mo., 606; L. R. A., 7 (new series), 293.

Brown *vs.* Edison Elec. Ill. Co., 90 Md., 400; 46 L. R. A., 745.

It is deemed unnecessary to refer more in detail to the ingenious argument of opposing counsel on this second assignment of error, constituting points I and II of their brief, except to say that they proceed upon the erroneous hypothesis that the negligence charged or involved in the case at bar is confined to the inside wiring of the residence of decedent, whereas the whole theory of the defendant in error, as plaintiff in the court below, was that the negligence of the plaintiff in error consisted in permitting an excess current to be transmitted from the electrical devices, wholly under the control of the plaintiff in error, onto the house wiring of said residence; and this theory was also stated by the court in that part of his charge to the jury to which no exception was raised by plaintiff in error in the court below and on which no assignment of error is based.

There are other phases of the argument, likewise based upon false premises, which will be met in the discussion of the other assignments of error.

III.

Sixth Assignment of Error.

The sixth assignment of error is based upon the refusal of the court to grant an instruction offered by the plaintiff in error to the effect that:

> "It is incumbent on the plaintiff to show negligence on the part of the defendant, or she cannot recover."

This proposed instruction was clearly covered by the charge of the court to the jury, in which, among other things, the court instructed the jury as follows:

> "You are further instructed that the mere fact of the occurring of the accident and of the death of the plaintiff's husband is no reason why you should hold

this defendant liable unless you believe from the showing made by the plaintiff, because the burden of proof is upon her to show it by a preponderance of the evidence, that the death of her husband was caused by an electric shock, from electricity generated at the defendant's plant *and negligently permitted to enter deceased's premises by the defendant.* And therefore, if you believe from a preponderance of the evidence that the deceased did not come to his death in such manner, it is your duty to find for the defendant, because the plaintiff would in such case have no right to recover."

IV.

Eighth Assignment of Error.

The eighth assignment is based upon refusal of the court to grant, as a specific instruction, the following:

> "If the jury should believe that the house installation *belonged to the deceased,* and that the defendant had no control over the same, and that the action happened by reason of defects in said installation, then the plaintiff cannot recover."

We submit that to have granted the instruction, especially in the form submitted, would have been error.

It was conceded by plaintiff in error, or rather testified to by its officials, that the current supplied to its customers had to be transformed to a voltage of 110. No evidence was introduced on behalf of the defendant showing or tending to show that the ordinary electric-light voltage of 110 was sufficient to cause the injury, without being supplemented by additional current than that proper to be supplied to a residence. On the contrary, officers and experts of the plaintiff in error testified that 110 voltage was not insufficient to have caused the injury as described in the testimony.

Witness Teale for plaintiff in error testified (R., 47) that

he had repeatedly received 500 and 600 volts; he described the conditions surrounding the accident and stated:

> "If a man stood on that floor and reached up with one hand to a stationary socket which was above him, with 110 volts on that wire, he wouldn't get any shock, and under ordinary conditions, he wouldn't get one under a heavier current."

Witness Thorpe, for plaintiff in error, testified (R., 57):

> "Yes sir, I have heard the testimony as to the physical condition of Molina; that he was a man in good normal condition and heart good and would say that 110 volts would not ordinarily kill a man in those conditions. * * *
>
> "In answer to your question, if that man was killed by electricity how do I explain it, if, under ordinary conditions, 110 volts would not kill him; what supposition? The only thing we can suppose is that there was *no ground wire on either of the transformers. If the ground wire protection was there it would not have happened.*"

In other words, in the light of all of the evidence as to the facts and circumstances, and with an intimate knowledge of the conditions actually existing in the residence (the plant having remained in the residence just as it was when the accident occurred), an official and expert of the plaintiff in error gives it as his opinion that if the transformer and other facilities, wholly under the control of the plaintiff in error, had not permitted an excess current to enter the residence, the injury could not have resulted.

The installation presumably belonged to the owner of the house. The defendant in error testified:

> "The house of Succession Dorado, the house in which I live, he (her husband) had under lease" (R., 43).

Again:

> "We had lived in the house since November, 1902,

> and we have lived there ever since. The house was lighted by electricity when we went to live there and the same lights that were there when we moved in, are there now. We did not have any repairs done to them."

Mr. Teale, the managing director of plaintiff in error, speaking of the installation of the light, said:

> "If on April first, or prior to that time, application had been made to our company to furnish a new one so that a light might be installed, we would have given the system a general inspection; but we had no authority to condemn it at the time; had we found the installation bad and unsafe, we would not have placed that meter there and turned our current in" (R., 49).

In paragraph above the same witness said:

> "The original wiring *was inspected by us before,*" etc.

It is true that Mrs. Requena and her sister testified that the brass socket of the dining-room was sometimes loose; but Mrs. Requena, defendant in error, testified that she often turned the light on or off and felt no bad effects therefrom, nor did her husband (deceased) ever before have any trouble with this light as far as she knew (R., 20-21).

Besides Mr. Teale, Judge Hord, counsel for defendant company, with others, and Mr. McKenzie, the inspector, visited the premises before and during the trial, and if anything had been wrong with the socket or there was any pertinent point in the present contention one or all of them would surely have discovered it, for they had in mind such a defense when the supplemental answer was drawn (R., 7), but offered no evidence showing or tending to show that any defect in the wiring of the residence contributed or could have been accountable for the injury; the evidence of the experts being directly to the contrary as shown above.

The instruction offered was properly denied.

Indianapolis & St. Louis Railroad Co. *vs.* Horst, 93 U. S., 291.

Union Pac. R. R. Co. *vs.* O'Brien, 161 U. S., 451.

V.

Fourth Assignment of Error.

This assignment is based upon the refusal of the court to instruct the jury as follows:

> "The jury are instructed that no verdict can be rendered herein against the defendant, unless it has been shown by a preponderance of the evidence that it was guilty of the negligence which was the approximate cause of the death of the deceased."

We submit that the charge of the court as a whole was fair and correct, and that the basis for relief against the plaintiff in error on the ground of negligence covered the case as presented, and that the granting of the instruction under discussion in the form offered would not have been appropriate, but would have tended to unnecessarily confuse the minds of the jurors, and would have been without evidence to sustain it.

The evidence, just quoted from the testimony of witnesses Teale and Thorpe for the plaintiff in error, conclusively shows that upon any theory of the conduct of the decedent at the time of his death he could not and would not have received the injury but for the excess current which it was left to the jury to decide, and which the jury did decide, came from the appliances of the plaintiff in error into the residence on the occasion of the injury. The court did instruct the jury, among other things, that the burden of proof was on the plaintiff to show the death through the negligence of plaintiff in error, and also that:

> * * * "If deceased by his own act contributed toward his own death, and that act on his part was negligent and contributed toward the accident which caused his death, then plaintiff cannot recover, even if it has been shown that the defendant was also negligent."

In the case at bar, as has been shown, the plaintiff in error did not introduce any evidence or attempt to meet the requirements of the law in the matter of showing that the decedent contributed, by any negligence on his part whatsoever, to the injury. But even had there been evidence in the case available to the plaintiffs in error by which to charge contributory negligence to the plaintiff, the language of the court was sufficient under the facts and circumstances of the case; and the jury, by their verdict, in effect, found that there was no negligence on the part of the defendant in error which contributed to the injury; and, in a case of this character, in the absence of a proper showing on behalf of the plaintiff in error, for the court to have instructed them specifically on the subject of proximate cause would have been inappropriate. The court chose rather, under the authority of decisions of this court, to fairly instruct the jury in its own language and in its own way.

In some of the cases cited in part II of this argument courts have had occasion to pass on the question of contributory negligence in cases of injuries from excessive current of electricity, in which cases the defendants, by their counsel, raised and endeavored to affirmatively establish contributory negligence as a defense.

In the Colorado case, quoted at some length in the argument of point II above (reported 31 Colo., 301), where the injured party, fresh from the bath-room, stood upon a metal register and connected the current through his body by taking hold of the metal or other appliance connected with the electric light bulb, the Supreme Court of Colorado said:

> "The fact that the plaintiff, in attempting to turn on the light, touched not only the rubber key but some other part of the fixtures, or that he stood upon a metal register, cannot be regarded as a want of due care and caution. *The fact that the interior fixtures may have been out of repair cannot relieve the company of the responsibility it holds to the public, and owed to the plaintiff, to not permit a deadly current of electricity to enter the house if within its power to prevent.*"

In another of these cases the defendants introduced the evidence of experts tending to show the injury sustained by the plaintiff could have been occasioned from the ordinary house current; yet the fact that the excess current came into the house having been proven, the court held that the ordinary handling by the injured party of electric light fixtures did not constitute lack of due care or contributory negligence.

In the case of Clements *vs.* La. Electric Light Company, 44 La. Ann., 692, the Supreme Court of Louisiana, after referring to the evidence to the effect that Clements was warned against touching the wire, the court, continuing, said:

> "Even in the presence of a known danger, to constitute contributory negligence it must be shown that the plaintiff voluntarily and unnecessarily exposed himself to it, unless it is of that character that the plaintiff must assume the risk from the very nature to which he is exposed."

To what danger did the husband of defendant in error "unnecessarily and voluntarily" expose himself? Not a line of evidence was offered tending to show that he did a single act that he had a right to believe carried with it the least fraction of peril to himself. On the contrary, both as a matter of contract with plaintiff in error to supply proper current and as the result of long experience, he presumed, and had a right to presume, himself entirely free from risk

in turning the light in question on or off, as he and his wife had done, probably, thousands of times before, and without any injuries ever having previously resulted from the acts similar to those performed on the occasion of his death (Mrs. Requena's testimony, R., 20-21; see also R., 24-47).

In the case of Alexander *vs.* Nanticoke Light Co. (209 Pa., 571), *supra,* the court said:

> "As a rule, the man who takes in his hand an electric lamp or telephone receiver, starts a fan or uses any other appliance which he has a right to use under his contract with an electric company, is helpless if the invisible and dangerous current has not been properly controlled by the company's officers and employees, who are conclusively presumed to know how to control it."

It is not enough to say that in the Pennsylvania case the house fixtures were supplied by the company, while in the case at bar they were not so supplied. The company knew in the one case what the customer was using by the fact of its installation; in the case at bar it knew it by inspection. In both cases it had contracted to supply the current in a safe state of intensity, and in both cases the injury was sustained by reason of the excessive voltage supplied, in violation of its contract, and in both cases the consumer had a right to proceed on the theory that there would be no excessive or dangerous volume of current.

We submit that it was not error on the part of the court below to refuse the instruction which forms the basis for the fourth assignment of error.

VI.

Seventh Assignment of Error.

The seventh assignment is based on refusal to charge as follows:

> "If the jury should believe that the defendant through its employees inspected its lines, transformers, etc., within a reasonable time before the accident and that said line, transformer, etc., were then in good condition and that the defendant had not, prior to the accident, any notice of said line, transformer, etc., being in bad condition, then the jury are instructed that the plaintiff cannot recover."

We submit that there was no evidence on which to predicate this instruction; quite the contrary.

The crux to the situation, as bearing upon the negligence of the plaintiff in error, had to do with the question as to whether or not an excessive voltage was permitted to pass from the transformer onto the house lines of the residence of decedent. A *prima facie* case was made out to the effect that the death of the decedent was due to an electric shock caused by such excessive volume of current, and the obligation was thrown upon the plaintiff in error to show due inspection and to account for the increased volume of current. The managing director undertook to state hearsay evidence, based on a report made by Inspector McKenzie of an alleged inspection on March 31, the day previous to the date of the injury, and this is the only alleged inspection made within a reasonable time prior to the time of the injury. When McKenzie went on the stand, he admitted that his said alleged inspection did not cover the appliances governing the excess current complained of.

> "On the 31st of March * * * *my inspection consisted in seeing that the poles and overhead trolley lines are in good condition.* I just walked long and

examined each pole but did not climb them. When I came to the transformer, I did not climb the pole and didn't look at the fuse. * * * No sir, on that day I didn't look at the transformer any closer than I could see it from the ground.

"*There is no way you can tell from looking at the outside of the transformer whether it is in good condition or not* * * * (R., 52). Yes sir, I reported to Mr. Teale (the managing director), on the 31st that I found the *lines* in perfect condition. In order to test a transformer, it would have to be taken down and sent to the shop for calibration."

In addition to this, there was the testimony of one of the witnesses of the plaintiff in error to the effect that their system was to make inspection every six months; but there was no effort to show that this system had been followed within the period of six months next preceding the injury; and the only evidence on which to base the instruction was the hearsay evidence of the managing director, so flatly contradicted by the testimony of the inspector on whose report he based his hearsay testimony.

We submit that it would have been gross error on the part of the court to have allowed the instruction constituting the basis for the seventh assignment of error.

VII.

Fifth Assignment of Error.

This assignment is based upon the refusal of the court to instruct as follows:

"An inevitable accident is one that cannot be foreseen by the exercise of reasonable foresight, or avoided by the use of reasonable caution, and hence, if the jury should believe that the cause of the deceased's death was an inevitable accident within the meaning of the foregoing definition, then the plaintiff cannot recover herein."

The death of the decedent by reason of an excess current from the appliances, wholly under the control of the plaintiff in error, was conclusively shown by the defendant in error and the plaintiff in error did not attempt to explain the accident on any other theory, although experts differed somewhat as to how the excess current might have passed through the appliances of the plaintiff in error and gotten into the residence of the decedent.

With this kind of a burden resting upon the plaintiff in error to explain away its own presumptive negligence and in the absence of any proof of proper inspection of the agencies of the plaintiff in error, whose operation was essential to prevent the excess flow of current, and without accounting for the excess flow on any theory which did not involve defective operation of the devices, wholly within the control of the plaintiff in error and not shown to have been duly inspected, it is hard to conceive how the case could properly have been left by the court to the jury under the instruction of "inevitable accident," forming the basis for this assignment. There was no evidence before the jury on which to support the instruction. On the contrary, in addition to the lack of inspection before the accident, there are the evidences revealed by the inspection, immediately after the accident, which tend to rebut the idea that an injury would ever have occurred had the dangerous applicances been properly inspected before the accident. The testimony of McKenzie is that he promptly made an inspection on the same night and after the accident (R., 50), his

> "object being to see what the trouble was. * * * inspected the electric wires and things in the house and on the outside * * *. Saw that one of the Edison cut-outs was uncovered * * *. One of the covers was off. * * * I found that one of these grounds (to the transformer) had been broken by something which struck the side of the pole (R., 52). One of the transformers at stop 3 was found in good condition and the other we left out on the pole and disconnected *because the foreman felt the outside of*

> *the transformer and noted that it was warm.* This was on the transformer about stop 6, between 6 and 7; so we pulled the Puetra de Tierra switch out for the night. * * * Yes sir, I do recollect that there was something wrong with the transformer at stop 6 that same night and I did not examine it for some six weeks after this accident. When I did so, I found the insulator had become charred, not burned but charred. I could not say as to whether that resulted in the primary current passing to the secondary current * * * in order to test a transformer, it would have to be taken down and sent to the shop for calibration. * * * That would be the proper means of doing it."

It does not appear that the transformer was ever so examined at the shops; but if so, the result of the examination was withheld from the jury, as also would have been the fact that the alleged report of the inspection of March 31, related merely to a perfunctory observation of the trolley lines and trolley poles, had the real fact of utter lack of inspection of *transformers* not been elicited from inspector McKenzie on cross-examination.

The facts pertaining to the cause of the injury were peculiarly within the knowledge of the plaintiff in error, having full control of the agencies through which the excessive volume of current passed; and in the absence of a full and complete showing, including the testimony on behalf of the plaintiff in error tending to show an inevitable accident, it would have been improper for the court to have granted this instruction.

Under the discussion of the second assignment of error, an authority was quoted referring to the suggestion that the injury in that case resulted from lightning, and the comments of the court there quoted are referred to as appropriate to the point now under discussion.

Alton, etc., Co. *vs.* Foulds, 81 Ill., 322.

In the case at bar the plaintiff in error did not attempt to prove unavoidable accident, although it was alleged in the supplemental answer (R., 7). Nor was the act of God relied upon as a defense.

In the case of Mitchell *vs.* Charleston Light and Power Company, 31 L. R. A., 557, the Supreme Court of South Carolina said:

> "An injury is said to be caused by an act of God when it results immediately from a natural cause, without the intervention of man, and could not have been prevented by the exercise of prudence, diligence and care by the party charged with the liability by reason of his negligence in permitting said injury to occur; and a defendant so charged with liability, if he invokes the act of God as a defense, *has the burden of proof upon him to show*, not only that the act of God was the cause, but *was the entire cause of the injury*, and the said injury could not have been prevented by the exercise of prudence, diligence, and care by the defendant, and that the defendant can be shielded."

It is unnecessary to refer in detail to the evidence in this case, which stand in the way of any such contention on the part of the plaintiff in error.

The expert Cornwell (R., 60) found "there was not proper fuse connection."

Inspector McKenzie (R., 91) said "it ought to have blown out my fuse, but there might have been a partial leak through the coils."

There was no possible interposition of the negligence of a third party, which could relieve the plaintiff in error.

> Harrison *vs.* K. C. Elec. Lt. Co., 195 Mo., 606; L. R. A., 7 (new series), p. 293.

The court below correctly refused to grant the instruction forming the basis of the fifth assignment of error.

VIII.

The First Assignment of Error.

This assignment of error is based upon the action of the court in denying the motion (R., 5) of plaintiff in error to strike a certain portion of the ninth paragraph of the original complaint, the language used being italicised in the extract of the amended or rewritten complaint, paragraph 5, as set forth in this brief in the statement of the case. This motion was denied by the court (R., 5) on the ground that a part of the language used was proper; and, as will be shown, any chance of injury was relieved by the instruction of the court to the jury in respect to that part of the language used, to which exception is taken in the brief of opposing counsel in the argument of this assignment.

By reference to the journal entry (R., 5), it will be observed that no exception was reserved on behalf of the plaintiff in error in respect to the action of the court in overruling the motion to strike.

As stated in the brief of counsel, page 34, the alleged error of the court in failing to grant the motion consisted *"in not eliminating the allegation in the complaint as to penal or exemplary damages."*

Even if the basis for an exception had been properly laid in the court below, by confining the motion to the objectionable averment and by excepting to the action of the court in overruling the motion, the assignment of error could constitute no basis for a reversal, because whatever error was involved, as a matter of pleading, was cured and relieved of any practical adverse effect on the plaintiff in error by the following instruction given by the court in its charge to the jury:

> "But you are further instructed that, in this sort of a case, where no express malice has been shown,

recovery of damages can be *compensatory only,* and therefore you cannot give any punitive damages, or, as it is sometimes called, 'smart money,' against defendant, if you shall find for the plaintiff."

IX.

Abandoned Assignments.

Assignments of error numbered 3, 9, 10, and 11 are each and all manifestly without merit, which is further indicated by the action of counsel in failing to specify or argue them, or any of them, in their brief as filed in this court.

The eleventh assignment of error alone raised a question of jurisdiction of the court below, based as it was upon the diverse citizenship of the parties plaintiff and defendant in the court below, and which was raised in the court below by motion (R., 9) made December 19, 1908, by which it was asserted that the defendant in error was a citizen of Porto Rico, and that the plaintiff in error, averred in the complaint to be a corporation organized and existing under the laws of New York, had, prior to December 19, 1908, the day on which the motion was filed (*not necessarily prior to the institution of the action*)—

> "in accordance with the law, registered in Porto Rico, designated an agent in Porto Rico for service, does its principal business in Porto Rico and for the purposes of the jurisdiction of this court is not a foreign corporation, *although originally incorporated in one of the United States.*"

No testimony whatsoever was introduced to sustain the assertions contained in said motion, no amendment was made averring that the assertions were true when the action was brought, and the averment that was made was not supported, either under oath or by the exhibition of documentary evidence of the averment. It is respectfully sug-

gested that if the assertions were true, as of the date of the institution of the action, jurisdiction of the court below would not have been defeated thereby.

It is respectfully submitted that there is presented by the record no reversible error, and that the judgment should be affirmed.

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